



STATEMENT ON CHILDREN'S RIGHTS IN NORTHERN IRELAND

June 2018

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1. FOREWORD



“It was once said that the moral test of government is how that government treats those who are in the dawn of life, its children...”

Hubert H Humphrey

The Commissioner for Children (NI) Order, 2003 tasks me to safeguard and promote the rights and best interest of children and young people across Northern Ireland. The legislation enables NICCY to undertake this task in a variety of ways. As an independent human rights institution, NICCY has to have due regard to the United Nations Convention on the Rights of the Child as the basis of our work. One of the ways we achieve this is by monitoring Government and its delivery in respect of children and young people’s rights as manifest through adequate and effective laws, practice and services.

NICCY has previously published reviews of children’s rights in Northern Ireland, firstly in 2004 with ‘Children’s Rights in Northern Ireland’ and then again in 2009 with ‘Children’s Rights: Rhetoric or Reality’. Resources did not permit NICCY to replicate those studies, nor do I believe it was necessary given the breadth and depth of evidence published by a vibrant human rights NGO and academic sector in Northern Ireland.

The people of Northern Ireland have become accustomed to political uncertainty but these are unprecedented times. The lack of a Northern Ireland Executive and Assembly

for 16 months has meant that no strategic decisions have been made to improve the lives of children and young people. For example we await approval of the Children and Young People’s Strategy, the overarching regional action plan for children (a key implementation measure of the UNCRC). This document and the accompanying feedback on the UN committee’s Concluding Observations is littered with references that “require Executive/Ministerial consideration” or “require Ministerial agreement”. I believe the best people to govern Northern Ireland is a local Assembly and Executive elected by the people of Northern Ireland. However it is our most vulnerable and disadvantaged children and young people who are most affected by the lack of these decision making processes. This makes the current political situation untenable.

When I became Commissioner for Children and Young People in 2015, I established a number of priorities for the office. These are mental health, poverty and educational disadvantage, and they have evolved in response to developments. Alongside these NICCY has been working on the core areas of implementation of children’s rights, safeguarding and youth justice. Our work has been further steered by the publication

of recommendations from the UN Committee on the Rights of the Child (UNCRC), following its examination of the UK Government in 2016. All this has meant that it has been an incredibly busy time not only for NICCY, but also for children's rights in general in Northern Ireland.

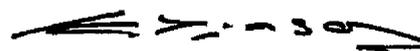
Given that it has been a busy period, and in keeping with my statutory responsibilities, it is timely that NICCY provides an analysis of the current state of children's rights in Northern Ireland.

This report aims to provide a review of two areas – the state of children's rights in relation to implementing the UNCRC, and nine areas that NICCY has been, and continues to work on. It is not intended to be a comprehensive analysis of all 42 children's rights but an overview of specific areas, and nor does it represent all the areas that my office is working.

By the very nature of such a report, it highlights the areas of most concern, the most egregious breaches of children's rights, and those children who are most at risk of being left behind. The UNCRC is very clear that ALL children must have their rights realised. There can be no excuse for even one child's rights to be sacrificed, therefore the majority of our work in NICCY is focused on these most vulnerable and marginalised children.

Children are advocates of their own rights, and "human rights defenders". This is key to our work and is relevant for all children in Northern Ireland. Regardless of what circumstances a child lives in, they must be fully aware of their rights and be able to assert them as they deem necessary. For that reason we have focussed particularly on Article 12 of the UNCRC in this document.

I hope that you find this a useful benchmark and reference guide for children's lives. It is NICCY's intention to update the document regularly so that it continues to be relevant and reflect the ongoing state of children's rights in Northern Ireland.



Koulla Yiasouma
Northern Ireland Commissioner for
Children and Young People
June 2018



2. INTRODUCTION

NICCY's Mission:

“To safeguard and promote the rights and best interests of children and young people”

This ‘Statement on Children’s Rights in Northern Ireland’ (SOCRNI) is NICCY’s first such publication and is informed by current contexts, the UN Committee’s Concluding Observations following their 5th periodic examination of the UK State Party, and NICCY’s work with stakeholders on key priorities.

Each rights themed area of this Statement is prefaced with the relevant UNCRC Articles, the UN Committee’s Concluding Observations, followed by the current context in respect of children’s rights followed by NICCY’s Calls to Government. On reading through, it will become clear that there is much to be done to address and indeed redress, issues in education, mental health, poverty, youth justice, safeguarding, age discrimination, as well as the broader societal issues of the legacy of the conflict and Brexit.

To accompany this report, and in line with NICCY’s duty to ‘ground’ our work within the UNCRC and to monitor rights compliance and delivery of services for children and young people, all Northern Ireland Government Departments have provided an input to the ‘Monitoring Table’. This outlines progress made in relation to the Committee’s Concluding Observations published in June 2016, following the last examination. This table includes associated commentary from NICCY and is available separately on our website at www.niccy.org/socrni; links to this and other documents are provided throughout this report.

The boxes throughout the document contain relevant examples of children that NICCY’s Legal Team have supported through our casework service.

As always we have ensured the ‘voices’ and participation of young people has informed our work, and have supported them in producing a young person’s version to accompany this document, as well as an accessible format for younger children.

It is important that we highlight rights breaches and hold Government and relevant authorities to account, especially where these breaches adversely impact on the lives and outcomes of our children and young people.

This is true now, more than ever, given the ongoing absence of a Northern Ireland Assembly and Executive, the increasing uncertainty about the outcome of the UK’s EU withdrawal and potential reduction of rights protections.

We will of course be following up on the ‘Calls to Government’, which forms an integral part of our mission to safeguard and promote the rights and best interests of children and young people.



3. STATUTORY DUTIES AND POWERS

NICCY's Statutory Duties

Promote

Awareness and understanding of the rights and best interests of Children & Young People

Awareness of function / location of the Commissioner and how to contact her

Monitor & Review

The effectiveness of law and practice

The adequacy and effectiveness of services

Advise & Communicate

Advise government and relevant authorities;

Communicate effectively with children and young persons and their parents

Seek views of Children & Young People

NICCY's Statutory Powers

Undertake Commission Challenge

Research or educational activities concerning the rights or best interests of children and young persons or the exercise of her functions

Conduct investigations as she considers necessary or expedient to meet her duties

Compile info', provide advice and publish any matter (including educational activities, investigations and advice) concerning their rights and best interests

Issue Guidance

Make Representations

In relation to any matter concerning the rights or best interests of children or young persons

Make representations or recommendations to any body or person relating to the rights and best interests of children and young persons

Address Rights Breaches

Advocacy

Assist with complaints to / against relevant authorities

Bring, intervene in, or assist in legal proceedings

UN CONVENTION ON THE RIGHTS OF THE CHILD

What is the UNCRC?

The UN Convention on the Rights of the Child is a list of the rights for every child up to 18. Government has promised to make these rights a reality for all children and young people in Northern Ireland.



GENERAL PRINCIPLE 1: All children have these rights, no matter who they are or what their culture, language, religion or gender is. No child should be treated unfairly on any basis.

You have the right to a name, nationality and identity.

If you have a disability you should be given the help you need.

You have the right to speak your own language and to practice your religion and culture freely.

You should always be treated fairly and respected.

GENERAL PRINCIPLE 2: All adults should do what is best for you.

You should be safe and cared for.

You should be protected from any harm and if you have been hurt you should get the help you need.

If you break the law you should be supported not to do it again.

You have the right to keep some things private.

GENERAL PRINCIPLE 3: You have the right to live and develop fully. You should have food, clothing and a safe place to live.

You should be respected and safe.

You have the right to rest and play.

You have the right to the best health care possible.

Your family should get the money they need to support you.

GENERAL PRINCIPLE 4: You have the right to give your opinion, for adults to listen to it and take it seriously.

You have the right to get information safely and to express your views.

You have the right to free education that develops your skills and abilities.

You have the right to meet with others to voice your opinions.

So who is NICCY?

The Northern Ireland Commissioner for Children and Young People is here to promote and protect these rights for all children and young people in Northern Ireland.

If you wish to contact us about this find us at:

- www.niccy.org
- [nichildrenscommissioner](https://www.facebook.com/nichildrenscommissioner)
- info@niccy.org
- 028 9031 1616
- @nichildcom

Please contact the Communications team at NICCY if you require alternative formats of this material.

4. UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention of the Rights of the Child (UNCRC) is a set of minimum standards that the UK Government and its devolved administrations have committed to upholding for all children, through ratification of the Convention. 4 principles which underpin the Convention are contained in the following articles:

- ▶ **Article 2** – Right to non-discrimination on any grounds;
- ▶ **Article 3** - Best interests of the child being of paramount consideration;
- ▶ **Article 6** - Right to life and development to child's maximum potential; and
- ▶ **Article 12** - Right of the child to have their views heard and taken into account in decisions which affect their lives.

Under NICCY's legislation¹ the role of the Commissioner is to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has statutory duties 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. In exercising the functions of the Office, the Commissioner has to have regard to all relevant provisions of the UNCRC. The UNCRC is viewed as the most complete international Human Rights Convention covering as it does, civil, political, social and economic rights.

The 5th periodic examination of the UK State Party, on delivery of its obligations in the Convention was held in 2016², the Concluding Observations of which can be found at www.niccy.org/UNReporting.

NICCY, in line with our monitoring role, requested that NI Government Departments report their progress on the areas for which they are responsible, individually and collaboratively, to our 'Monitoring Table'. Our commentary has subsequently been added to this and this has been published as stated, on our website at www.niccy.org/SOCRNI.

It is our intention to repeat this exercise when we publish the next Statement on Children's Rights report.

¹ The Commissioner for Children and Young People Order (Northern Ireland) 2003

² The 4 UK Children's Commissioners submitted a joint report to the Committee - www.niccy.org/UNReporting.



5. THE CHILDREN'S SERVICES CO-OPERATION ACT

The Children's Services Co-operation Act (Northern Ireland) 2015 (CSCA) is the most significant legislative development relating to children in Northern Ireland in recent years. It provides a statutory framework to improve the wellbeing of our children and young people within a rights based context³. The eight outcomes set out in Section 1 of the legislation defines the well-being of children and young people, they are:

- ▶ Physical and mental health;
- ▶ The enjoyment of play and leisure;
- ▶ Learning and achievement;
- ▶ Living in safety and with stability;
- ▶ Economic and environmental well-being;
- ▶ The making by them of a positive contribution to society;
- ▶ Living in a society which respects their rights; and
- ▶ Living in a society in which equality of opportunity and good relations are promoted between persons who share a relevant characteristic and persons who do not share that characteristic.

Significantly in determining such meaning, regard is to be had to any relevant provision of the UNCRC⁴.

The Act places obligations on Government Departments and Agencies to co-operate with each other in order to contribute to the improvement of the specified well-being outcomes. It places a further statutory obligation on Government to adopt a **Children's and Young People's Strategy**, outlining how this will be achieved.

Section 3 of the CSCA states the NI Executive must set out in its Children and Young People's Strategy, how it intends to improve the well-being of children and the actions to be taken by Northern Ireland Departments, Children's Authorities and Children's Services Providers to realise those outcomes.

The Act creates a duty on all key agencies to cooperate in the planning, commissioning and delivery of children's services. It also creates an enabling power to allow departments to pool resources to address crosscutting children's issues.

To address and redress breaches of children's rights in Northern Ireland will, in many instances, require the cross-departmental and cross-agency approach envisaged in the CSCA. NICCY wishes to see that the statutory obligations on Government Departments and Agencies through the Act will go some way to ensuring that deeper, societal issues which impact on the ability of all children to develop to their maximum potential and achieve successful outcomes, will be more fully addressed.

³ <http://www.legislation.gov.uk/nia/2015/10/contents/enacted>

⁴ Section 1(4) reiterates that in determining the meaning of wellbeing for the purposes of the CSCA – regard is to be had to any relevant provision of the UNCRC (Gen' Ass' resol' 44/25 20.11.1989).



6. CHILDREN AND YOUNG PEOPLE'S STRATEGY

The UN Committee's General Comment No. 5 on 'general measures of implementation' of the Convention, states the need for a 'National Action Plan for Children'. The Northern Ireland Executive's Children's and Young People's Strategy is viewed as such for this jurisdiction.

The NI Executive published its first 10 year Children and Young People's Strategy in 2006⁵ and commenced (through the Children's and Young People's Strategy Directorate of the Department of Education) working on its successor in 2015. NICCY along with others has provided extensive advice on the Strategy, reflected in part in the recent publication of the consultation responses summary (see www.niccy.org/ChildrensStrategyConsultation). We have also provided advice on CSCA Guidance to accompany it, as well as on children's and young people's participation mechanisms and other relevant aspects via the Project Board.

A draft Programme for Government (PfG) Outcomes Framework was consulted on in 2016, the subsequent 2017 election and ongoing political impasse have meant that this was not finalised. However, the 'Briefing on Northern Ireland Budgetary Outlook 2018-20' published by the Department for Finance in November 2017 indicated the PfG was finalised and that future budgetary decisions would be based on this. There appears to have been few amendments to the outcomes and indicators. Outcome 12 – 'We give our children and young people the best start in life' is welcomed. The 10 year Children's and Young People's Strategy is in effect the PfG for children and young people, and should give effect to Outcome 12 and the relevant indicators of the other outcomes.

Section 10 of the CSCA stated that the first Strategy was to be laid before the NI Assembly prior to the end of the 12 month period, beginning on the day the CSCA received Royal Assent, i.e. by 9th December 2016. This deadline had been missed and the lack of a Northern Ireland Assembly and Executive prolong concerns over further delay to its publication and implementation plan.

⁵ <https://www.education-ni.gov.uk/publications/ten-year-strategy-children-and-young-people-northern-ireland-2006-2016-0>



7. NICCY'S KEY CHILDREN'S RIGHTS PRIORITIES

As part of identifying key priorities, we engaged with a range of stakeholders to develop our triennial Corporate Plan; this covers the period of 2017-20. From this we developed our Annual Business Plans while retaining flexibility to respond to new and emerging issues in Children's Rights. Currently we have 9 key priority areas of work, these are:

- ▶ 7.1 Educational Inequalities;
- ▶ 7.2 Mental Health;
- ▶ 7.3 Child Poverty;
- ▶ 7.4 Safeguarding;
- ▶ 7.5 Youth Justice;
- ▶ 7.6 UK Withdrawal from the EU - 'Brexit';
- ▶ 7.7 Legacy of the Conflict;
- ▶ 7.8 Participation; and
- ▶ 7.9 Challenging Discrimination in
 - Access to Goods, Facilities and Services proposed legislation;
 - Mental Capacity legislation;
 - Equal Protection.

The following sections address each in turn.



7.1 EDUCATIONAL INEQUALITIES

Articles 28 and 29 of the UNCRC relate to the child's right to education.

Article 28

1. *States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*
 - (a) *Make primary education compulsory and available free to all;*
 - (b) *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*
 - (c) *Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - (d) *Make educational and vocational information and guidance available and accessible to all children; and*
 - (e) *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*
2. *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*
3. *States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.*

Article 29

1. *States Parties agree that the education of the child shall be directed to:*
 - (a) *The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
 - (b) *The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
 - (d) *The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and*
 - (e) *The development of respect for the natural environment.*
2. *No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

The 2016 Concluding Observations made a number of recommendations about education. The Committee recommended that the Government:

- (a) *Enhance its efforts to reduce the effects of the social background or disabilities of children on their achievement in school and to guarantee the right of all children to a truly inclusive education in all parts of the State party, including for newcomer children without experiences of formal education. In this regard, closely monitor and if necessary, regulate the establishment and management of academies and free schools in England, and abolish the practice of unregulated admission tests to post-primary education in Northern Ireland;*
- (b) *Use the disciplinary measure of permanent or temporary exclusion as a means of last resort only, forbid and abolish the practice of “informal” exclusions, and further reduce the number of exclusions by working closely with social workers and educational psychologists in school and using mediation and restorative justice;*
- (c) *Ensure that children have the right to appeal against their exclusion, and are provided with legal advice, assistance and, where appropriate, representation for those without means;*
- (d) *Abolish the use of isolation rooms;*
- (e) *In Northern Ireland, actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration;*

- (f) *Taking note of Sustainable Development Goal 4, Target 4.2 on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations; and*
- (g) *Make children’s rights education mandatory.⁶*

Educational Inequalities: The Context

There are approximately 340,000 pupils in all funded schools in Northern Ireland. Almost 174,000 pupils are in primary schools (Year 1–7) and just over 140,500 pupils are in post-primary schools.⁷ There are:

- ▶ 23,500 children in funded pre-school education;
- ▶ Over 23,000 attend integrated schools (7% of children);
- ▶ 5,700 children are educated in 39 dedicated special schools;
- ▶ Almost 6,200 pupils participate in Irish medium education and over 1,200 attend Irish medium units attached to English medium schools;
- ▶ There are 617 pupils enrolled in Education Other Than at School (EOTAS) centres, including pupils who are dual registered with a mainstream school;
- ▶ Almost 63,000 children attend Grammars and almost 78,000 attend Secondary Schools; and
- ▶ 100,000 or 30% of pupils in primary and post-primary schools are entitled to Free School Meals (FSME).⁸

⁶ Para 72, CRC/C/GBR/CO/5, 3rd June 2016.

⁷ Statistical Bulletin 2/2018 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2017/18, Department of Education 27th February 2018

⁸ *Ibid.*

Educational Inequalities

There are marked inequalities in Northern Ireland with regard to attainment in education. Specific groups of children and young people are much more likely to do better or worse in education depending on their characteristics and /or circumstances. The Department of Education has identified groups of children who are at particular risk of underachieving, including Traveller children; children from ethnic minorities; children with additional needs and children from disadvantaged backgrounds.⁹ Evidence shows that there are additional groups at risk of underachieving in education and these include – boys, Protestants and children out of school e.g. in Education Other Than at School, Community and Statutory Alternative Education Providers, informally excluded, children in hospital, children in Woodlands Juvenile Justice Centre and possibly children educated at home, although no data exists on this group.¹⁰

It is unclear whether children and young people in Northern Ireland are getting an effective education in line with Article 29(1) of the UNCRC. While data on educational outcomes is available from the Department of Education and other sources, this tends to focus almost exclusively on the educational attainment of young people in GCSE and A level examinations. There are no measurements of long term educational outcomes which relate to the development of the personality, talents and abilities of individual children as required by the UNCRC. While educational qualifications are important, the achievement of a child rights compliant education system in Northern Ireland requires a broader examination of outcomes in

education which encompass the, 'distance travelled' by each individual child. This should include a clear focus on the development of the personality, talents and skills of all children in education in Northern Ireland.

In 2016/17 70.3% of children and young people achieved 5 GCSE's grades A* to C including English and Maths.¹¹ Boys achieve slightly below average at 67% and girls slightly better at 74%.¹² 66% of Protestants, 69% of Catholics and 69% of children of other religions¹³ achieved 5 GCSE's grades A* to C including English and Maths.¹⁴ Just 50% of FSME children achieve 5 GCSE's grades A* to C including English and Maths compared to 78% of children who are not entitled to free school meals.¹⁵

The biggest discrepancy of all is the difference between the achievement levels of children who attend Grammar schools and those who do not. 94% of children at grammar schools achieve 5 GCSE's grades A* to C including English and Maths as opposed to 50% of children who do not attend grammar schools.¹⁶ This is a difference of almost 44 percentage points. Based on DE statistics relating to the number of children in Grammar and Secondary schools in NI we can therefore estimate that almost 39,000 young people in post primary education do not achieve 5 GCSE grades A* to C including English and Maths. One of the most common arguments given for the retention of academic selection at 11 is social mobility. However, only 14% of children in Grammar schools are FSME as opposed to 40% FSME in Secondary schools.¹⁷

⁹ Appendix 1, Priorities for Youth Consultation Document, Department of Education, consultation closed 10th December 2012.

¹⁰ Click to access - Educational Inequalities and Inclusion Position Paper, NICCY, 31st July 2017

¹¹ Statistical Bulletin 10/2017, Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2016-17, Department of Education, 14th December 2017.

¹² *Ibid.*

¹³ 'Other' is defined as other Christian, no religion and non-Christian.

¹⁴ Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7th June 2017.

¹⁵ Statistical Bulletin 10/2017, Year 12 and Year 14 Examination Performance at Post-Primary Schools in Northern Ireland 2016-17, Department of Education, 14th December 2017.

¹⁶ *Ibid.*

¹⁷ Statistical Bulletin 4/2017 School Meals in Northern Ireland, 2016/17, Department of Education, 11th April 2017.

Multiple disadvantage exacerbates educational inequalities. With children who are on FSME 34% of Protestant Boys, 43% Protestant Girls, 44% Catholic Boys and 53% Catholic Girls achieve 5 GCSE's A* – C including English and Maths.¹⁸ There are 2,373 Looked after Children (LAC) attending school in Northern Ireland.¹⁹ 28% of LAC achieve 5 GCSE's grades A* to C including English and Maths, in comparison to 70% of the general population.²⁰ Looked after Children are also much more likely to have a statement of Special Education Needs (SEN) – 27% in comparison to 5% of the general population.²¹ There are more than 79,000 pupils or 23% of the total school population with some form of Special Educational Needs (SEN).²² 17,800 children have a Statement of SEN.²³ Also, 21% of children with a statement of SEN and 39% of children on the SEN Register achieve 5 GCSE's Including English and Maths A* - C.²⁴ The Northern Ireland Audit Office (NIAO) published a report into special educational needs in June 2017.²⁵ In 2015-16, 79% of Statements of SEN were completed outside the statutory time limit of 26 weeks. The NIAO report concluded that neither the Department nor the Education Authority (EA) can currently demonstrate value for money in terms of economy, efficiency or effectiveness in the provision of support to children with SEN in mainstream schools. Evidence from NICCY's legal cases highlights concerning trends regarding the operation of the SEN system. The imposition of set allocations of educational psychology time to schools, mean that only those children viewed by schools as 'most in need' are referred for educational psychology assessments. As a result, many children are waiting unacceptably long periods of time for referrals which adversely impacts on their education. Statements of SEN have become more vague in terms of specified provision, making them difficult to enforce. Evidence also shows a marked move away from 'specification and quantification' i.e. including in Statements the support/services necessary, and total number of assistance hours a child requires by the Education Authority. This is in breach of the requirement for specificity in Statements imposed by Article 16 of the Education (NI) Order 1996.

► **Case Study:** The parents of a 7 year old boy who had a diagnosis of a specific learning disability and Autism were concerned that their son was falling behind his peers, and that this could lead to him becoming disengaged from education and have a negative impact on his mental health and wellbeing. The Education Authority were of the view that the needs of the boy could be met within the resources ordinarily available in the school, and that he didn't require any additional input or services. NICCY advised the parents that the decision of the Education Authority could be challenged by issuing an appeal to the Special Educational Needs and Disability Tribunal (SENDIST). NICCY supported the parents by drafting the appeal for the parents and a detailed Case Statement, which set out a critique of the Education Authority's decision, based on the evidence available in professional reports. The Education Authority reconsidered their approach and agreed to conduct a Statutory Assessment of the boy. This resulted in a draft Statement of Special Educational Needs being produced for the boy. We were then able to further advise the parents regarding the content of the Statement, to ensure that the provision met the assessed needs of the child. Based on this advice, the parents were able to request amendments to the provision.

¹⁸ Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7th June 2017.

¹⁹ Looked After Children in Education, Key Statistics 2016/17, Department of Education.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Statistical Bulletin 2/2018 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2017/18, Department of Education 27th February 2018.

²³ *Ibid.*

²⁴ Statistical Bulletin 6/2017 Qualifications and Destinations of Northern Ireland School Leavers 2015/16, Department of Education, 7th June 2017.

²⁵ Special Educational Needs, Report By The Comptroller And Auditor General, 27th June 2017.

With regard to children with disabilities, there is no disaggregated data collected relating to disability specifically. However, we do know that 32% of working age disabled people, compared to 13% non-disabled people, have no qualifications.²⁶ In 2016/17 just over 1,000 Traveller and 353 Roma children were enrolled in Northern Ireland schools.²⁷ 81% of Traveller and 73% of Roma children are FSME.²⁸ Statistics on the attainment levels of Traveller and Roma children are not published, broken down by specific ethnic group, by the Department of Education due to small numbers. However, information that is available shows that Traveller pupils continue to have exceptionally poor educational outcomes. From 2003/4 – 2009/10 only 11 Traveller children achieved 5 GCSE's grades A* - C. None of these children went onto higher education.²⁹ In 2011/12 just 9.3% of Roma children in England and Northern Ireland achieved 5 GCSE's Including English and Maths A* - C.³⁰

Newcomer Children and Young People

There has been a huge increase in the numbers of Newcomer children in Northern Ireland schools. In 2001/2002 there were just under 1,400 Newcomer children and in 2016/17 this increased to almost 14,000.³¹ Currently there are over 80 languages spoken in Northern Ireland schools, with Polish and Lithuanian the most popular languages after English.³² Issues for Newcomer children are around their ability to access education and achieve in education on the basis on equality of opportunity. They include school readiness, a lack of recognition of diversity by schools, and unrecognised and therefore unmet need relating to multiple inequalities e.g. SEN.³³

► **Case Study:** We were approached by a voluntary organisation who asked us to work with a Newcomer, whose son had a special educational need, to advise them of their child's rights and to assist in having them realised. The boy, who was of Primary School age, had been in Northern Ireland for some time but had not secured a placement in a school that met his educational needs. His parents were not sure how to progress this as they didn't know how the SEN system operated. NICCY informed the parents of their son's rights and explained the statementing process to them. We then engaged with the Education Authority on behalf of the boy and his parents to ascertain what assessments had been undertaken, and the provision the Authority intended to make available. We were able to advise the parents regarding the draft Statement of Special Educational Needs which had been prepared for the child, and also to assist them to navigate the system to challenge the provision contained in the initial draft. This resulted in a final Statement being produced which best met the child's needs, and identified an appropriate placement which the child is now settled in and is accessing his education with the necessary supports.

²⁶ DETINI , Labour Force Survey, Quarterly Supplement January-March 2014 as referenced in Figuring it Out, Looking Behind the Social Statistics in Northern Ireland Ann Marie Gray Goretti Horgan Amanda Leighton, ARK, November 2015

²⁷ Irish Traveller & Roma pupils in education, Key Statistics 2016/17, Department of Education.

²⁸ *Ibid.*

²⁹ Report of the Taskforce on Traveller Education to the Department of Education, August 2011.

³⁰ DENI Survey of School Leavers, 2011-12 / National Pupil Database and Key Stage 4 Attainment Data, 2001/12.

³¹ Statistical Bulletin 2/2017 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2016/17, 22nd February 2017.

³² *Ibid.*

³³ The integration of newcomer children with interrupted education into Northern Ireland schools (A Belfast Based Case Study) Northern Ireland Strategic Migration Partnership, September 2014.

LGBT Children and Young People

Recent DE commissioned research into the educational experience of LGBT children and young people found that two thirds do not feel welcomed or valued in their post-primary school, and almost half had experienced bullying as a result of their sexual orientation or gender identity.³⁴ Research by the Princes Trust interviewed 700 6-18 year old young carers and over two thirds were routinely bullied in school by pupils who often mock their parents' disabilities or appearance. 39% said no teachers at school knew they were young carers and over half did not feel supported.³⁵ NICCY welcomes the recent publication for schools on supporting young carers in school.³⁶

EOTAS

Education Other than at School (EOTAS) provides education for children with social, emotional, behavioural, medical or other issues, who cannot otherwise access suitable education. In 2016 / 2017, 617 children in Northern Ireland were registered in EOTAS Centres.³⁷ NICCY has concerns around the ability to access timely assessments for EOTAS and that as a result many children are disengaging from education and not returning to it, leaving school without qualifications. Evidence shows a continued increase in the number of young people with mental health, anxiety-related conditions and addictions in EOTAS Centres.³⁸

Examination Entry Practice

In 2015-16, 2,900 pupils in Northern Ireland were judged ineligible by schools to be included in their public results data.³⁹ One of the key findings of the Education and Training Inspectorate's (ETI) pupil's eligibility report was that some schools are excluding pupils from their overall exam results in order to improve their place "in media-published league tables" as high performing schools, so they continue to be in demand with regard to enrolment, linked to school funding.⁴⁰ The vast majority of pupils deemed to be ineligible were Secondary School pupils.⁴¹

Juvenile Justice Centre

Issues exist with the ability of other groups of children and young people to access education on the basis of equality of opportunity. These include young people in the JJC, most of whom already face significant difficulties in education. The most recent Criminal Justice Inspection (CJI) Inspection of the JJC found that 41% had a statement of educational need and only one child had attended post-primary education for substantive periods of time.⁴² At that time all the children of compulsory school age attended EOTAS provision when not in Woodlands.⁴³ All had histories of non-attendance or disrupted schooling, and most had complex educational needs, with low levels of educational attainment.⁴⁴

Beechcroft Regional Child and Adolescent Mental Health facility

Children in Beechcroft Regional Child and Adolescent Mental Health facility attend an on-site education unit. There are concerns regarding certain elements of the curriculum on offer, it is not possible for pupils to continue with or take courses that have a practical element. Young people who are over the compulsory school age upon entry can not avail of the Education Unit unless they were the registered pupil of a school in the community. There is no tuition over the summer period to assist pupils who may be trying to retake exams or trying to catch up on their education.

³⁴ Post-Primary School Experiences of 16 – 21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGBT), PACEC for the Department of Education, April 2016.

³⁵ *Ibid.*

³⁶ <http://www.cypsp.org/supporting-young-carers-in-schools-in-northern-ireland>

³⁷ Statistical Bulletin 2/2018 Annual enrolments at schools and in funded pre-school education in Northern Ireland, 2017/18, Department of Education 27th February 2018.

³⁸ The ETI Chief Inspector's Biennial Report 2014-2016, 16th November 2016.

³⁹ An Evaluation of the Effectiveness of Examination Entry practice and Policy in Post-Primary Schools, ETI. August 2017.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² An Announced Inspection of Woodlands Juvenile Justice Centre' Criminal Justice Inspection Northern Ireland, May 2015.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Home Tuition

With regard to children who are out of school and require home tuition there are a number of limitations in its provision, including delays in accessing tuition. Education is normally provided on average between 4 and 5 hours per week, and does not appear to take into account the ability, any exams that the child may be about to do, or the comparative level of education provided to children in school. There is usually a focus on English and Maths with difficulty in accessing practical courses. Provision varies with time out of school and the stage of education of the child, and often no additional provision is available to take account of the child's SEN.

Informally Exclusions

We also know that there are children, most with special or additional educational needs, being "informally" excluded from school in Northern Ireland. These are children who are sent home early, or who are on part-time timetables where the exclusions are not being recorded. Due to the failure to record these "informal" suspensions or exclusions they are not being properly documented, resulting in a hidden problem with no data collection hampering knowledge about the scale of the issue.

Elective Home Education

There are no figures or estimates for the number of children of compulsory school age who are not receiving full-time education. One of the reasons for this is because parents who exercise their right to home educate are not required to register their child with the Education Authority. There is no statutory duty on the Education Authority to routinely monitor the quality of home education or whether that child is having their talents, personality and abilities developed.

► **Case Study:** In one case a 13 year old boy had been expelled from school following allegations by other pupils of a sexual nature against the boy. His parents felt that the process was unfair in that the school had not tried to facilitate the boy's attendance at the school while a police investigation was undertaken and instead preferred to have him permanently removed from the school. We were able to guide the parents through the process of appealing the expulsion to the Expulsion Appeals Tribunal. The parents and the child gave evidence of the schools lack of engagement with them in advance of the expulsion which was a breach of their procedure. The parents also raised concerns regarding the lack of a robust risk assessment or any risk management plan being considered by the school before they made the decision to expel. We raised concerns regarding the schools risk assessment process which diverged from the model advocated by the Education Authority. We further raised the schools failure to engage with the appropriate statutory bodies in order to inform their thinking before the decision was made to expel the child. The Tribunal found that the school had failed to follow their own expulsion procedure and directed that the expulsion should be expunged from the child's record.

Children's Wellbeing in School

Anxiety in schools is an area which has repeatedly been raised through NICCY's engagement with hundreds of children and young people to date. The pressure that children are under as a result of the emphasis schools place on academic attainment due to published league tables and continual assessments are issues which children and professionals raise frequently in NICCY's engagement with them. Children's mental health in Northern Ireland is an extremely serious issue. Research by the National Union of Teachers in England⁴⁵ has highlighted the high levels of school-related anxiety, stress, disaffection and mental health problems of children in schools.

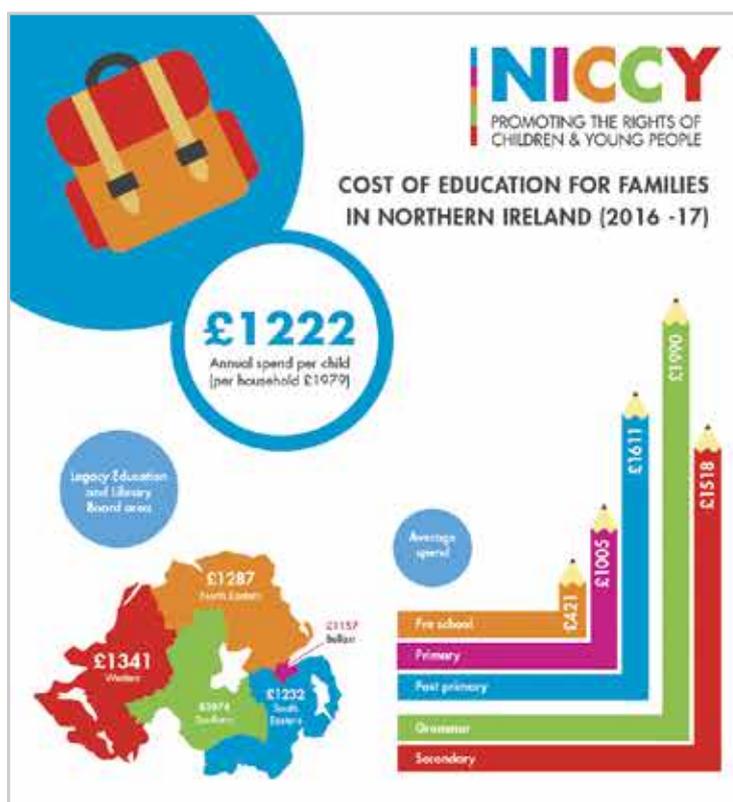
⁴⁵ "Exam Factories", National Union of Teachers, June 2015.

Action Short of Strike

Action short of strike over teacher's terms and conditions of employment began in January 2017. Currently four of the teachers unions are taking part. Because of action short of strike the ETI are unable to award performance levels or observe teaching. According to ETI, action short of strike is predominantly impacting on the primary sector and on the education of children.⁴⁶ In 250 Primary main inspections, 20% of schools failed to provide safeguarding assurances on the day of inspection, although with follow-up the situation is remedied.⁴⁷

Education Budget

The education budget in Northern Ireland is in crisis. It is estimated that the education system is facing a funding deficit of £350 million by 2020.⁴⁸ NICCY believes that fundamental reform of education in Northern Ireland is required to address the funding crisis. The Department of Education has stated that due to contractual commitments regarding funding, cuts will have to be made to a range of initiatives in place to improve the educational attainment of vulnerable and socio-economically deprived children. NICCY is concerned about the impact this will have on the ability of these children to access their right to education, particularly given the findings of NICCY's research on the Cost of Education – some of which are illustrated below. More detailed information on the costs of education can be accessed in NICCY's report at www.niccy.org/CostOfEducation.



⁴⁶ Meeting between NICCY and ETI, 21st November 2017.

⁴⁷ *Ibid.*

⁴⁸ <http://www.irishnews.com/news/2017/12/13/news/education-system-facing-350-million-funding-gap-1208942/>

Calls to Government

Government must address educational inequalities through:

1. Ending the educational attainment gap between specific groups of children and young people;
2. Removing all barriers to every child's full participation in, and access to, a child rights compliant education system, including supporting LGBT, newcomer, LAC and children with SEN, and addressing the costs of education to families;
3. Ensuring that the focus of education is on the development of every child's talents, skills and abilities as well as academic achievement; promoting children's wellbeing and measuring same; and
4. Having an urgent debate and consultation on how we fund education in Northern Ireland, and whether resources can be identified, streamlining the education system and reducing duplication, to ensure that all children have access to an effective education regardless of their circumstances.



7.2 MENTAL HEALTH

Article 24 of the UNCRC is the main article of the Convention that sets out a child's right to health, which includes mental health. It builds on and develops the rights to life, survival and development to the maximum extent possible, set out under Article 6. Paragraph 1 of Article 24 specifically refers to the rights of a child to the highest attainable standard of health, and access to facilities for treatment and rehabilitation.

24 (1) States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Paragraph 2 provides a list of appropriate measures that States must take in pursuing the full implementation of Article 24 (1). This includes the need to ensure the provision of necessary medical assistance and health care to all children, with an emphasis on the development of primary health care. It also sets out a range of prevention measures to ensure good health is promoted and facilitated, and by doing so reaffirms that health rights are inclusive in that they cover prevention, health promotion, intervention and rehabilitative services.

There are also a number of additional articles of the UNCRC that are of particular relevance to a child's right to mental healthcare.

Article 25 sets out the role of State Parties where a child has been admitted to hospital for treatment, and in particular their right to a periodic review.

25. States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 23 specifically refers to children with a disability and the need to ensure that they have effective access to services, including health care and rehabilitative services.

23 (3) (...) the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

In 2016 the Committee on the Rights of the Child expressed a range of concerns in relation to mental health, this included reference to the rise in mental health problems, and made specific reference to the impact of substance misuse. They also expressed concern about the rates of youth suicides and the fact that children with mental health conditions are often treated far away from home (...), do not receive adequate child-specific attention and support, are placed in adult facilities, or are detained in police custody due to shortage of places in mental health clinics.⁴⁹

⁴⁹ UNCRC, 'Concluding Observations: UK (12 July 2016) and NI CRC/C/GBR/CO/5, Para 60

The Committee made a number of recommendations to the UK Government and Northern Ireland in order to address the issues raised, and these are outlined below.

61. (a) Regularly collect comprehensive data on child mental health, disaggregated across the life course of the child, with due attention to children in vulnerable situations, and covering key underlying determinants.

(b) Rigorously invest in child and adolescent mental health services and develop strategies at national and devolved levels, with clear time frames, targets, measureable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources. Such strategy should include measures to ensure availability, accessibility, acceptability, quality and stability of such services, with particular attention to children at greater risk, including children living in poverty, children in care and children in contact with the criminal justice system.

(c) Expedite the prohibition of placement of children with mental health needs in adult psychiatric wards or police stations, while ensuring provision of age-appropriate mental health services and facilities;

(d) Support and develop therapeutic community-based services for children with mental health conditions; and

(e) Review current legislation on mental health to ensure that the best interests and the views of the child are taken duly into account in cases of mental health treatment of children below the age of 16, in particular with regard to hospitalization and treatment without consent.

Mental Health: The Context

There is no universally agreed definition of mental health. However, we can refer to statements made by recognised authorities such as the World Health Organisation (WHO).⁵⁰ The WHO describes mental health as “an integral and essential component of health” and the WHO constitution refers to health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” An important implication of this definition is that mental health is understood as being more than just the absence of mental disorders or disabilities. Mental health is a state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can be productive and is able to make a contribution to his or her community. It also emphasises that on this basis, the promotion, protection and restoration of mental health should be regarded as a vital concern of individuals, communities and societies throughout the world.

There is a lack of epidemiological research on the prevalence of poor mental health of under 18 year olds in Northern Ireland, which means that our understanding of mental health need within this population is not as clear as it should be. It is commonly understood that the most frequently occurring mental health problems in children and young people are depression, anxiety, self-harm, eating disorders, PTSD and ADHD.⁵¹ Despite the absence of prevalence data in Northern Ireland, there is a range of other evidence that show us that mental health problems are a primary cause of ill health, morbidity and mortality among adolescents.

⁵⁰ Mental health: strengthening our response, WHO- March 2018, available from <http://www.who.int/en/news-room/fact-sheets/detail/mental-health-strengthening-our-response>

⁵¹ Missed Opportunities, Khan, Centre for Mental Health, 2016

Rates of poor mental health are estimated to be between 1 in 10, or 1 in 4 depending on the parameters applied e.g. age range and whether self-reported or clinical tools are used, general or sub population sample.⁵² There are a range of additional indicators which demonstrate the increasing scale and complexity of mental health problems occurring in under 18's and points to these issues appearing at an increasingly younger age. Indicators available to us include youth suicide rates, anti-depressant prescription rates for 0-19 year olds, self-harm rates for 0-18 year olds, self-reported poor emotional wellbeing by children and young people and referrals to family support services for emotional and behavioural support. It has been estimated that mental health need in Northern Ireland is 25% greater than England.⁵³ There are a range of reasons for this but it is accepted that the legacy of the conflict, high rates of poverty and economic deprivation are significant contributing factors.⁵⁴

Child and adolescent mental health services (CAMHS) sit within the wider health and social care system. There is broad consensus that the current system is unsustainable in financial terms and does not meet the current or projected needs of the whole population. There is also growing concerns that progress to take forward the wide-ranging reforms is too slow. Pressures across the Health and Social Care system means that the investment required in mental health services for under 18's have not been made at the scale and pace necessary to fulfil its vision of 'a comprehensive suite of services to promote children and young people's emotional well-being and mental health and

to identify and respond to need'.⁵⁵ In addition to financial pressures, greater investment in these services is also affected by a lack of parity of esteem between mental health and physical health services, and between child and adult mental health services.⁵⁶

► **Case Study:** A 16 year old young person presented himself to A&E indicating that he was experiencing suicidal thoughts and also thoughts about harming others. He was triaged by the Crisis Assistance and Intervention Team but they determined that they could not assist him as he had been drinking alcohol and they agreed to make a referral to the Drug and Alcohol Mental Health Service, but they were not able to provide an urgent appointment. We intervened to ensure that Social Services were made aware of his case and his vulnerabilities, and secured an urgent assessment for him.

Mental health services for under 18's only receives 7.8% of the total mental health budget, this is despite the fact that there is much evidence to demonstrate the growing scale and complexity of mental health problems within this age group. There is also strong international evidence that adolescence years is a peak time for the onset of mental health problems, and therefore the child and adolescent years should be the focus for a greater proportion of investment, in order to prevent or reduce problems becoming more complex and deep seated.

⁵² References available from NICCY Mental Health Scoping Paper 2017 pp. 16-20, available from <http://www.niccy.org/SpeakYourMind>

⁵³ Bamford Review of Mental Health and Learning Disability, 2006 pp. 19-20, *ibid*

⁵⁴ In 2012 a preferred regional 'Stepped care' model for the organisation and delivery of CAMHS in Northern Ireland was agreed. This was a response to a specific recommendation from a 2011 CAMHS Review carried out by the Regulation and Quality Improvement Authority in Northern Ireland and also aligned with the overall strategic direction for CAMHS as set out in the 2006 Bamford Review of Mental Health and Learning Disability.

⁵⁵ Whole-person care: from rhetoric to reality- Achieving parity between mental and physical health, RCPSYCH, 2013.

⁵⁷ CAMHS Reform- An Example of Integration: Presentation to NICCY by HSCB- dated 2015

⁵⁸ Missed Opportunities: A review of recent evidence into children and young people's mental health, Centre for Mental Health, Khan, 2016

There is a limited amount of publically available, standardised regional data on the services contained in the regional 'Stepped Care' Model. There has also never been a population wide survey to understand the prevalence of poor mental health in under 18s. The lack of availability of data makes it difficult to fully assess how well current services are meeting the needs of children and young people. It also makes it difficult to identify where the gaps are in provisions and what impact existing services are having on outcomes for children and young people.

Key information on levels of need, and adequacy and impact of services, are vital for informing the planning and delivery of mental health support for children and young people. There are a number of developments underway, led by the Department of Health and the HSCB, that are aimed at addressing the gaps in our understanding of need and service activity. Most notably, a regional standardised recording system of basic information on children and young people that are accessing statutory mental health services (step 3-5), is currently being implemented.⁵⁹ It is vitally important that this dataset is fully populated, maintained and made publically available. It is also important that this information becomes part of the evidence base upon which services are planned and delivered. We also understand that the Department for Health has commissioned a prevalence survey to measure the mental health need within the population of children and young people. This is a welcomed development which will fill a major gap in our knowledge and will achieve one of the agreed actions set out in the Review of Acute CAMHS- Action Plan 2015/16.⁶⁰

Whilst we wait for robust, regional population need and service level data to become fully embedded in the system, there has been a range of existing investigations and reports that point to the need to address the availability and accessibility of services, which includes community based infrastructure across Northern Ireland.⁶¹ There has also been a range of reports, over many years that have raised concerns about the adequacy of mental health services for young people with complex needs that require specialist input i.e. eating disorders, alcohol and drugs problems, young people requiring secure care, and services for children and young people with a learning disability.⁶²

Greater consistency in the availability and accessibility of services has been achieved since the 'Stepped Care Model' framework was published in 2012. For example, the emergence of crisis response home treatment services within HSCT's and specialist services such as the gender identity clinic. It is important to recognise this progress, however significant fragmentation of services still exists across the region.⁶³

The lack of information on spending on services raises concerns about the equity in investment and sustainability of existing services because of real- term budget cuts for Health and Social Care services. The increasing budgetary pressures on services has led to increasing reports of thresholds being raised for children and young people trying to access mental health services and longer waiting times to receive help. According to current Tier 3 targets, no one should have to wait longer than nine weeks for an appointment with CAMHS, however, this target was missed 130 times in 2016.⁶⁴

⁵⁹ CAMHS Minimum Dataset- Managed by HSCB and completed by HSCT's.

⁶⁰ Information provided to NICCY from the Health and Social Care Board.

⁶¹ A Review of Beechcroft and Child and Adolescent Acute Care Pathways, Rees, D., York, A., & McDougall, T. 2014 (Rees Report, 2014)

⁶² Bamford Review Vision of a Comprehensive Child and Adolescent Mental Health Service, 2006 available from <https://www.health-ni.gov.uk/publications/bamford-published-reports>; CAMHS Review, RQIA- 2011; Review of Eating Disorder Services in NI, RQIA- 2015; Rees Report, 2014.

⁶³ Rees Report, 2014 and CAMHS Reform- Stepped Care Model Implementation Review, DHSSPS 2016

⁶⁴ Assembly Written Question 4864/16-21

Furthermore, this figure represents an increase of 62% on the previous year, and a rise of 136% from 2014. The percentage of referrals “not accepted” at first appointment to step 3 CAMHS has risen from 33% in 2013/14 to 42% in 2015/16 and is significantly higher than other parts of the UK.⁶⁵

Professionals that work within the CAMHS system or support young people to access CAMHS are working within an environment where demand is out-stripping its ability to respond.⁶⁶ This sort of pressure can lead to a practice of ‘referring on’ by services which prevents the development of a culture, as well as a practice, of joint working that is critical to ensuring children and young people receive a seamless service. The lack of joint working and integration of CAMHS with other services, such as health, social, education and justice is concerning, as this is vital for those very vulnerable groups of children and young people who have multiple and complex needs. There are long standing challenges across all HSCT’s with the quality of the transition between child and adult mental health services, the preparation and planning for many young people is not being done effectively.⁶⁷

► **Case Study:** A 16 year old girl was out of school and was engaging in risk taking behaviour including the misuse of drugs and alcohol. She had been referred to CAMHS but the referral was not accepted and she was re-referred on to a community based counselling service. This service did not feel able to meet her needs due to the complexity of same and she was referred back to her GP who then re-referred her to CAMHS/Drug and Alcohol Mental Health Service. When her Mother contacted NICCY, her daughter was in crisis and was self-harming, having spent around 9 months in the system without any assessment or treatment. We intervened to ask why the CAMHS referral was being refused and were able to impress upon them the urgency of the referral. As a result of our intervention she was able to access an assessment and the appropriate services on an emergency basis, and a treatment pathway was identified for her which she was able to engage in.

The establishment of the regional in-patient psychiatric unit at Beechcroft is an example of very positive progress of provision for children and young people. There has also been a significant decrease in the number of children and young people reported as being treated in adult wards for mental health problems, from 26 in 2015/16 to 2 during 2016/17.⁶⁸ NICCY continues to have concerns about the suitability of paediatric beds for young people that are being treated for a mental health problem; this includes young people with an eating disorder or during a mental health crisis. Limited access to specialist, multidisciplinary community CAMHS is leading to problems across the system, this includes delays in young people getting timely access to services and to delays in young people being discharged from hospital.⁶⁹ This is particularly problematic for young people with complex needs.

► **Case Study:** We were contacted by a 15 year old young person directly who was in Beechcroft undergoing an assessment. They were extremely concerned that they were not being given the opportunity to input into their care planning in any purposeful way, and that there was little planning being undertaken for their discharge. The young person had disengaged from the staff in the Unit as they felt so disenfranchised. We were able to assist the child to have their voice heard and supported them to reengage with staff and planning processes.

⁶⁵ Information provided to NICCY from the Health and Social Care Board-August 2016; State of Child Rights England 2017: Briefing Health 2017

⁶⁶ *ibid*

⁶⁷ Still Vulnerable, NICCY 2012; Improving mental health pathways and care for adolescents during transition to adult services in NI, PHA, 2017

⁶⁸ Information provided to NICCY from HSCB by email on 15.11.2017

⁶⁹ A Review of Beechcroft and Child and Adolescent Acute Care Pathways, Rees, D., York, A., & McDougall, T. 2014

There are considerable issues with children and young people moving between a range of regional facilities most notably Beechcroft, Woodlands, Lakewood and Glenmona.⁷⁰ There have been a range of reviews and inspections in recent years. They have highlighted the revolving nature of admission for a vulnerable group of young people, in which prevalence of mental health problems is high. NICCY has also identified a concerning pattern involving these services through its legal casework. The HSCB has commissioned a review to take a holistic look at the provision offered by these regional facilities, and the relationship between them.⁷¹

Schools have a critical role in promoting emotional wellbeing and preventing mental health problems in children and young people. The Department for Education provides guidance through the 'I-Matters Programme' to support schools to address the emotional wellbeing of pupils. However, many schools and teachers do not feel equipped to address aspects of mental and emotional wellbeing with children and young people, nor is there sufficient and dedicated time given to this aspect of a child's development during the school day. Also partly as a consequence of this, not all schools are taking responsibility in the way that they should for their role in supporting young people who have emotional or mental health problems.

The Department of Education commissions an independent counselling service for post-primary aged pupils' in grant-aided schools called the Independent Counselling Service for Schools (ICSS). This is a vital service and one which is reporting an increase in the number of children experiencing self-harm, mental ill health, alongside other issues such

as neglect.⁷² There is no equivalent service for primary schools even though there is evidence of increasing levels of mental and emotional health need in this age group.⁷³ This policy decision runs counter to the prevention and early intervention agenda that is being adopted across Government. The Department for Education has conceded that a lack of funds, rather than a lack of need for such as service, has prevented the extension of existing services.

Children and young people who require treatment or services for mental health difficulties are particularly vulnerable to not having their rights or best interests fully taken into account. An RQIA review of CAMHS in 2011 found a lack of independent advocacy services for children and young people who have mental health needs.⁷⁴ More recently a separate review of advocacy services for children and adults recommended that a full needs assessment be carried out to determine future capacity requirements and improve access to advocacy, and to develop inter-agency communication and collaboration with advocates.⁷⁵

There are concerns about the ability of the CAMHS workforce to provide therapeutic care which meets NICE guidelines and which offers real therapeutic choices for children and young people.⁷⁶ More funding is being directed to services such as 'primary care talking therapy hubs' which provide an alternative to medication, however, these services are mainly focused on over 18 year olds. We understand from figures provided by the HSCB that regional recurrent funding of £50,000 was invested in CAMHS training in psychological therapies in 2015 / 16.⁷⁷

⁷⁰ These facilities are the inpatient mental health facility, the juvenile justice centre, the regional secure care facility and a specialist residential care home.

⁷¹ HSCB Review led by Independent Chair. The report was completed in March 2018. The decision to publish remains with DoH.

⁷² Independent Counselling Service for Schools (ICSS) Annual Report: September 2015-June 2016, Department for Education 2017

⁷³ *Ibid*

⁷⁴ Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland, RQIA 2011

⁷⁵ Review of Advocacy Services for Children and Adults in Northern Ireland, RQIA 2016

⁷⁶ A Review of Beechcroft and Child and Adolescent Acute Care Pathways, Rees, D., York, A., & McDougall, T. 2014

⁷⁷ CAMHS Investment profile- Information provided to NICCY from HSCB- dated 2 March 2017.

What is less clear is the impact it is having on those availing of it. There is clearly a need to focus on alternatives to drug therapies for all age groups but particularly children and young people. Although recurrent funding is to be welcomed, this funding is inadequate when it is set against a backdrop of spiralling increases in mental and emotional health problems being identified from a very young age, and year on year increases in the numbers of children and young people being prescribed anti-anxiety and anti-depression medication.⁷⁸ It is absolutely critical that the NI Executive drive forward with the transformation that is required in services to ensure that all young people have 'access to a comprehensive array of services that address the child's physical, emotional, social and educational needs in order to promote positive mental health'.⁷⁹

NICCY is currently undertaking a rights based review of emotional and mental health services for children and young people.⁸⁰ The overall aim of the Review is to assess the adequacy and effectiveness of emotional wellbeing and mental health services for children and young people, highlight good practice and identify barriers that prevent them from fully realising their rights to the highest attainable standard of mental health.

The review will be focusing on a number of key overarching issues that have been identified through our scoping work of mental health service provision for children and young people.⁸¹ More specifically, the Review will gather children and young people's direct experiences of receiving or attempting to access mental health services, to better understand the availability,

accessibility and quality of services from their perspective. It will also include a mapping and analysis exercise of available official data to bring a greater level of transparency to the budgetary spend on mental health services and the operational aspects of service delivery. The Review is currently underway and the report will be launched in autumn 2018.

Calls to Government

Government must prioritise children and young people's mental health through:

- 1. Demonstrating robust strategic planning and investment in children and young people's emotional well-being and mental health, these are necessary steps in order to embed consistency in the availability and quality of services;**
- 2. Developing robust data monitoring systems to better identify need and direct resources to best effect;**
- 3. Tackling the root causes of poor mental health by applying a 'health in all policies' approach to policy making, at all levels, and across all sectors; and**
- 4. Delivering on existing CAMHS improvement plans that have identified areas where resources are required. This includes ring-fencing investment to implement actions and which must include robust and transparent oversight mechanisms.**

⁷⁸ Assembly Written Question 52569/11-16

⁷⁹ Child and Adolescent Mental Health Services: A Service Model, DHSSPS (2012) available from <https://www.health-ni.gov.uk/publications/child-and-adolescent-mental-health-services-service-model-july-2012>

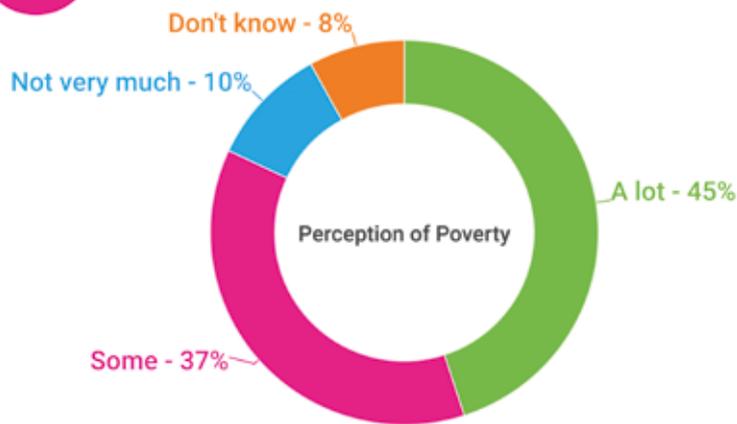
⁸⁰ Mental Health Review-Terms of reference www.niccy.org/SpeakYourMind

⁸¹ NICCY Mental Health Scoping Paper 2017, available from www.niccy.org/SpeakYourMind

What do people think about child poverty in Northern Ireland?



How much child poverty is there in NI?



23%

The actual figure for child poverty is **103,400** (23%) or almost **1 in 4 children** *



46%

When told the actual figure, **around half** said it was more than they thought

7.3 CHILD POVERTY

Article 27 of the UNCRC provides all children with the right to an adequate standard of living:

1. *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
2. *The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
3. *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*

The 2016 Concluding Observations raised concerns about Government action to tackle child poverty and the impact of welfare 'reforms' on children and young people.

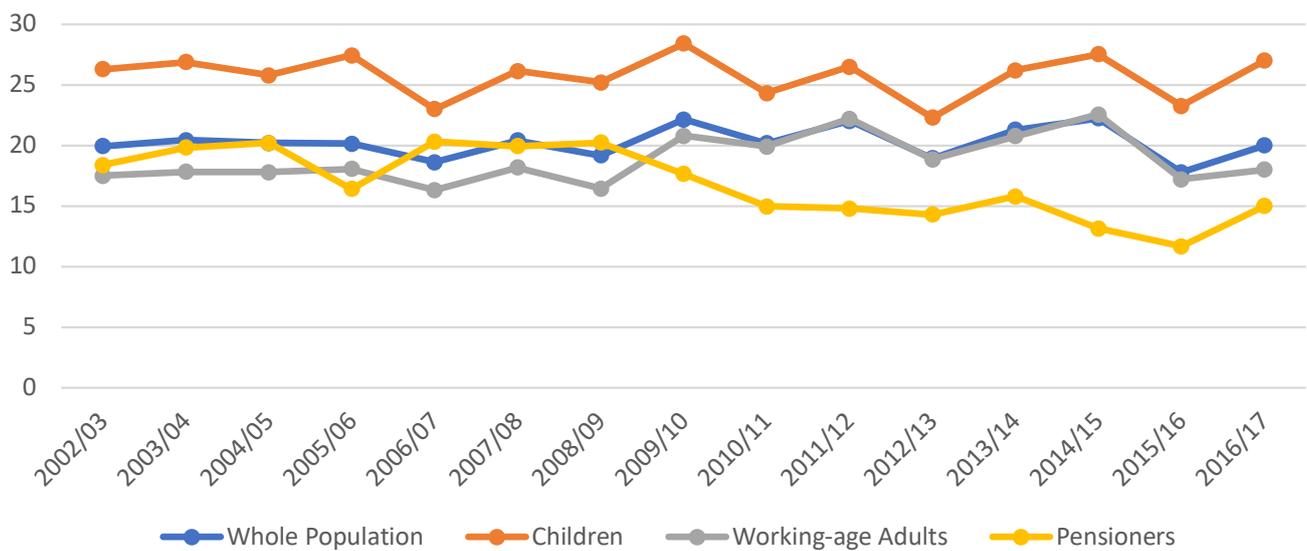
71. *The Committee draws the attention of the State party to target 1.2 of the Sustainable Development Goals, on poverty reduction, and urges the State party to:*
 - (a) *Set up clear accountability mechanisms for the eradication of child poverty, including by re-establishing concrete targets with a set time frame and measurable indicators, and continue regular monitoring and reporting on child poverty reduction in all parts of the State party;*
 - (b) *Ensure clear focus on the child in the State party's poverty reduction strategies and action plans, including in the new "Life Chances Strategy", and support the production and implementation of child poverty reduction strategies in the devolved administrations;*
 - (c) *Conduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups;*
 - (d) *Where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impacts of the reform on different groups of children, particularly those in vulnerable situations;*
 - (e) *Strictly implement the legal prohibition of prolonged placement of children in temporary accommodation by public authorities in England, Wales and Scotland, and enact similar legislation in Northern Ireland;*
 - (f) *Take necessary measures to reduce homelessness and to progressively guarantee all children stable access to adequate housing that provides physical safety, adequate space, protection against the threats to health and structural hazards, including cold, damp, heat and pollution, and accessibility for children with disabilities.*

Child Poverty: The Context

Poverty affects an estimated 118,000 children in NI.

The Child Poverty Act 2010 specified four measures of child poverty (relative, absolute, material deprivation, persistent), each measuring slightly different aspects of child poverty. While all four together provide the most complete picture of the incidence of child poverty, relative poverty AHC (After Housing Costs) is considered the most robust single measure, allowing comparisons across the UK. According to government statistics, in 2016-17 more than a quarter of children (27%) were in relative poverty, After Housing Costs. This equates to around 118,000 children.⁸²

Figure 1: Relative poverty rates (AHC) for population groups in Northern Ireland.



Source FRS data 2002/3 to 2016/17 - Relative poverty AHC.

Poverty disproportionately affects children, compared to other age groups.

As can be seen in figure 1 above, children have consistently been the age group at most risk of being in poverty in Northern Ireland. Currently the poverty rate for working age adults is 18%, nine percentage points less than the child poverty rates. The gap is even larger between children and pensioners: pensioner poverty is currently 15%, almost half the poverty rate for children.

It is important to recognise the success of government policy in reducing pensioner poverty, which must be maintained, and it is vital that there is also a concerted effort to reduce child poverty in Northern Ireland.

⁸² DfC (June 2016), Poverty Bulletin 2014-15.

Poverty disproportionately affects some groups of children.

The Department for Communities 'Households Below Average Income 2015-16' data tables show that some groups of children are more likely to experience poverty than others:

- ▶ Children in lone parent families (40%) compared to those in couple families (18%);
- ▶ Children in workless households (65%) compared to households where all adults work (11%);
- ▶ Children living in families where someone is disabled (30%) compared to those where no one is (20%); and
- ▶ Children living in families with 3+ children (27%) compared to families with one child (22%).⁸³

The majority of children in poverty live in households where parents are working

While a child is significantly more likely to be in poverty if they live in workless households, the majority of children in poverty actually live in households where at least one parent works.

- ▶ 30% of poor children live in households where all adults work (31,000);
- ▶ 31% live in households where at least one adult is working, but not all (32,000); and
- ▶ 39% live in workless households (40,000).⁸⁴

While children may be in poverty due to their parents being out of work, parents finding work is no guarantee of being able to lift their family out of poverty.

Poverty has a severe impact on children's lives

Poverty impacts on children and young people's educational outcomes. Young people entitled to free school meals are almost twice

as likely to leave school without five good GCSEs (55.2%) compared with young people not eligible for free school meals (24.2%).⁸⁵

Poverty affects children's health throughout their childhood, and throughout their lives.

- ▶ Infant mortality is 16% higher in the most deprived areas than in the least;
- ▶ Suicide rates are three times higher in the most deprived areas than in the least;
- ▶ The self-harm admission rate is four times higher in the most deprived areas than the least;
- ▶ Mental ill-health is twice the rate in most deprived areas than least;
- ▶ Children born into poverty statistically live shorter lives (women -4.4years, men -7.0 years); and
- ▶ Children born into poverty statistically have fewer years of good health (women -14.6 years, men -12.2 years).⁸⁶

For thousands of children, poverty results in homelessness and whilst records are not kept for number of children we know that in 2015-16 5,645 families presented as homeless and a further 1,693 were in temporary accommodation.⁸⁷

Child Poverty and Welfare Reforms

While eradicating child poverty was a strong UK government commitment 10 years ago, it is clear that currently there is less of a focus on reducing child poverty. Evidence from across the UK indicates that welfare reform changes have disproportionately targeted families with children,⁸⁸ the clearest example of this being the recently introduced Two Child Limit on Child Tax Credits and Universal Credit.⁸⁹

⁸³ DfC (2015), Households Below Average Income 2015-16.

⁸⁴ DfC (2017), Households Below Average Income 2015-16.

⁸⁵ DE (2017), Statistical Bulletin 6/2017, Qualifications and Destinations of Northern Ireland School Leavers 2015-16.

⁸⁶ DoH (2016), Health inequalities regional report 2016.

⁸⁷ NISRA Statistical Bulletin 8/2016, (Nov 2016), Children and Young People's Strategic Indicators.

⁸⁸ H Reed and D Elson (2014), An adequate standard of living (CCE: London); <http://wales.gov.uk/topics/people-and-communities/welfare-reform-in-wales/analysing-reforms/?lang=en>

⁸⁹ If parents claiming CTC already have 2 or more children, and then have another baby, they will not receive the £2,780 per annum CTC for that, or subsequent children. Also, where a new UC claim begins, this payment will only be provided for a maximum of two children. Where a family with an existing CTC claim moves across to UC, or where there has been less than a 6 month gap between ceasing CTC and the UC claim starting, the current level of payment will remain in place.

Figure 2: Impact of two child limit on families in Northern Ireland.⁹⁰

Policy	2016-17	2017-18	2018-19	2019-20
Limiting child element to 2 children for new births in tax credits (£m)	0	5	14	21
Limiting child element to 2 children for new claims in UC (£m)	0	2	8	12
Total 'savings' (£m)	0	7	21	33
Estimated number of children for whom per child element will be withdrawn.	0	2,518	7,554	11,870

As the figure above shows, an estimated 2,518 families were affected by this cut in 2017-18, which equates to at least 7,500 children, as there would have been at least three children in each family affected. This rises to 11,870 families and at least 35,610 children affected in 2019-20. This is a reduction of £2,780 for each child affected per year and, given this is targeted at families on low incomes, will undoubtedly result in many of these children falling into poverty, or into deeper poverty.

It is important to recognise, however, that the Two Child Limit was only one of a number changes introduced through the Welfare Reform and Work Act, many of which apply to families with children. One example is the removal of family element in tax credits and UC for new claimants. In the year ahead this will affect 11,000 families, with each family losing £550.

Other cuts, targeted at working age adults, will also affect families with children, including:

- ▶ The freeze on working age benefit levels, resulting in a reduction in payments of £65 million in NI over the coming year;
- ▶ The reduction in work allowances in UC by £730, estimated to affect 57,000 families in NI with 109,000 children; and
- ▶ Removal of the additional work-related payment for new benefit claimants of £29.05.⁹¹

While these cuts affect all in a family, children are often hidden in these considerations. Benefit recipients are considered, not the dependent children in the household, even when the benefits being cut are intended for children. Sanctions are also being imposed on parents in receipt of social security, although figures are not available for how many children are affected, as these records are not collated.

Recent research from the Institute for Fiscal Studies indicates that these changes in social security will have a considerable impact on the numbers of children in poverty. Their report 'Living standards, poverty and inequality in the UK: 2017–18 to 2021–22' found that,⁹² between 2015-16 and 2021-22, the relative poverty rate (AHC) is projected to rise by 2 percentage points for the general population. All of this increase is due to a much more significant rise in child poverty, of 7 percentage points, over this time. In contrast, the relative poverty rates for pensioners and working-age non-parents are projected to remain fairly constant.

⁹⁰ Figures for 'savings' from NISRA Summer Budget paper, estimated number of children calculated for this briefing. These figures were confirmed by DfC in November 2017.

⁹¹ Figures provided to NICCY by DfC, 13/11/17.

⁹² Hood, H., Waters, T., (2017) Living standards, poverty and inequality in the UK: 2017–18 to 2021–22, (London: IFS).

Welfare Reform mitigations

One of the key areas for the Fresh Start Agreement in November 2015 was a commitment by the Northern Ireland Executive to dedicate £585 million over four years to mitigate against social security cuts resulting from 'Welfare Reform' changes. A working group was subsequently established under Professor Eileen Evason, and its proposals on how to allocate the mitigation package were accepted by the Executive. This is perhaps the most significant action taken by the Northern Ireland Executive to address poverty, including child poverty, for many years. This package is due to be reviewed in 2018-19 although, in the absence of an Executive, it is not clear how this will be taken forward.

It is important to note that the mitigation package was used to mitigate against cuts in social security due only to the changes that pre-dated the Welfare Reform and Work (NI) Order 2016. Subsequent cuts, including those that explicitly target children, for example the Two Child Limit, are not addressed by the mitigation package.

Public attitudes to child poverty

To explore public awareness of child poverty in Northern Ireland NICCY commissioned Kantar Millward Brown to survey a representative sample of 1001 adults across Northern Ireland.⁹³

When asked about the key cause of child poverty, 69% of people thought that child poverty was largely due to circumstances beyond the control of parents, with only 20% placing the blame with parents. When given a more detailed list of causes, the most commonly chosen focussed on challenges of managing money and debt, of finding decently

paid work, as well as blaming poverty on parental addictions and choosing to live on benefits. Only a minority identified challenging circumstances such as long term illness or disability in the family, family breakdown or bereavement.

The survey then asked respondents about how important it was that action be taken to reduce child poverty in Northern Ireland, with 97% believing it to be 'very' or 'quite' important. When asked who should be taking these actions, four in five (81%) stated that this was the responsibility of the NI Executive, and less than half of this number believed it fell to the UK government to tackle child poverty in Northern Ireland.

Respondents were asked what they felt government should be doing to lift children out of poverty, and so asked respondents whether they supported a range of actions. The most popular actions were to:

- ▶ Create more decently paid jobs (95%);
- ▶ Address poor educational outcomes for children in poverty (94%);
- ▶ Providing support services for families affected by bereavement, family breakdown, disability, illness or alcohol or substance abuse (93%);
- ▶ Providing training or information for parents on money management skills (93%); and
- ▶ Expanding affordable or free child care provision (91%).

The survey then asked people about whether they felt things had got more difficult for people on low incomes. Around two in three (63%) stated that it was harder now for a person to start out poor, and get out of poverty through hard work, compared to ten years ago. Only 14% said that they felt it was easier now than ten years ago.

⁹³ The technical report for the survey, along with topline findings can be accessed here.

Finally, we wanted to explore people's personal experiences of poverty and their perceptions of their vulnerability to fall into poverty in the future. When asked, more than half (56%) said that they knew people who were struggling to make ends meet, and 17% said that they themselves were in this situation. Only one in three (32%) did not have current personal experience of poverty. Parents were significantly more likely to say that they knew someone struggling to make ends meet (65%) than non-parents (52%), and to say that they themselves were struggling (23%) compared to non-parents (14%).

Two in three respondents (65%) said that they worried about becoming poor in the future, and again, parents were more likely to agree with this (75%) than non-parents (59%).

Government Actions Taken to Address Child Poverty

Life Chances Act and Child Poverty Annual reports

The Child Poverty Act 2010 was amended by the Welfare Reform and Work Act 2016 to become the Life Chances Act 2010. While it was also amended to remove most of the statutory duties contained in the Act for England, Scotland and Wales, the duties on the Northern Ireland Executive to produce child poverty strategies and annual reports were retained.

The Executive published its Child Poverty Strategy on 25 March 2016.⁹⁴ Its aim is 'to reduce the number of children in poverty and reduce the impact of poverty on children' and focusses on four high level outcomes:

- ▶ Families experience economic well-being;
- ▶ Children in poverty learn and achieve;
- ▶ Children in poverty are healthy; and
- ▶ Children in poverty live in safe, secure and stable environments.

While many of the actions contained in the Strategy were out of date when it was published, it was useful in indicating the range of actions being taken by statutory agencies to address child poverty. Surprisingly, though, there was little mention of the Welfare Reform changes due to be implemented and their potential to cause more children to fall into poverty, and to fall into deeper poverty.

An Annual Report 2016/17⁹⁵ for the Strategy has since been published, providing a great deal of detail on a wide range of actions the Northern Ireland departments and agencies are taking to address child poverty across the four high level outcomes.

This outlines how departments and agencies are seeking to target many actions at children and families in poverty, and uses the 'report card' approach to answer the following three questions:

- ▶ How much did we do?
- ▶ How well did we do it?
- ▶ Is anyone better off?

There is room for improvement in the report as, for example, many of the actions do not indicate how they are targeting child poverty, rather than disadvantage more generally. However, it provides a detailed picture of the actions being taken to address child poverty, and of the resources dedicated to these actions. It would be helpful, in subsequent annual reports, to show change over time in relation to the resources committed, and the numbers of children affected.

Moreover, given that a new child poverty strategy will be due to be published in March 2019, it would be timely to engage with families and children living on low incomes to identify relevant actions required to eradicate child poverty.

⁹⁴ DfC (2016), Delivering Social Change: The Executive's Child Poverty Strategy 2014-17, (Belfast, DfC).

⁹⁵ DfC (2018), Child Poverty Annual Report 2016-17, (Belfast, DfC).

Poverty Strategy / Social Strategy

In 2015 a legal case resulted in the ruling that the Northern Ireland Executive had breached Section 28E of the Northern Ireland Act (1998) through its failure to adopt a strategy for dealing with poverty, social exclusion and patterns of deprivation based on objective need. This had been inserted into the Act by the 2006 St Andrews Agreement.

Subsequently the Executive committed to the production of a 'Social Strategy' to focus on poverty and social deprivation, delivering the outcomes and indicator framework in conjunction with Industrial and Investment Strategies. In the absence of an Executive since January 2017, none of these has been forthcoming.

When a Poverty Strategy or Social Strategy is developed, it is essential that it adopts a 'lifecycle approach' in a similar way to the 'Lifetime Opportunities Strategy', which considered the causes and impacts of poverty at different ages, and developed actions in relation to early years children; school age children; working age adults; and pensioners.

Calls to Government

Government must take action to prioritise the eradication of child poverty through:

- 1. Meeting the material needs of children, through increasing family incomes, including by ensuring that there are sufficient, decently paid jobs for parents and young school leavers;**
- 2. Allocating resources to mitigate against recent changes in social security benefits, including the Two-Child Limit, ensuring that the social security system is the safety net intended to prevent families falling into poverty; and**
- 3. Developing and implementing a comprehensive action plan to eradicate child poverty, including introducing affordable childcare, tackling educational inequalities, social exclusion and homelessness.**



7.4 SAFEGUARDING

“Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known they cannot be kept waiting any longer for the protection to which they have an unqualified right.”⁹⁶

UNCRC Articles

Article 6

- 1. States Parties recognize that every child has the inherent right to life.*
- 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.*

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37 (extract)

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

⁹⁶ UN (2006) World Report on Violence against Children. Geneva: UN.

Article 22

1. *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*
2. *For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.*

The Committee's 2016 Concluding Observations made a wide range of recommendations the UK and devolved Governments need to act on in order to better realise children's rights across these articles of the UNCRC. The Committee also made a specific comment that the recommendations of the Marshall (or Independent) Inquiry into Child Sexual Exploitation in Northern Ireland must be implemented.

2016 Committee on the Rights of the Child Concluding Observations

Right to life, survival and development

28. *The Committee recommends that the State party:*

- (a) *Address underlying determinants of infant and child mortality, including social and economic deprivation and inequality;*
- (b) *Introduce automatic, independent and public reviews of unexpected death or serious injury involving children, including in custody, care and mental health care institutions in all the territory of the State party.*

Violence, abuse and neglect

42. *With reference to its general comment No. 13 (2011) and Sustainable Development Goal 16, Target 16.2, the Committee recommends that the State party:*

- (a) *Revise the Children and Young Persons Act (1933) in order to protect all children under 18 years from child abuse and neglect;*
- (b) *Strengthen systematic data collection and recording of information on violence against children, including domestic violence, gender-based violence, abuse and neglect, in all settings, as well as information sharing and referral of cases among relevant sectors;*
- (c) *Increase the number of social workers and strengthen their capacity to address violence against children;*
- (d) *Give due weight to the views of children concerned in the responses to violence, including in criminal and family law proceedings;*
- (e) *Consider ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence.*

Sexual exploitation and abuse

44. *The Committee recommends that the State party, including devolved governments, Overseas Territories and Crown Dependencies:*
- (a) Systematically collect and publish comprehensive and disaggregated data on child exploitation and abuse, including through mandatory reporting, in all settings;*
 - (b) Develop and implement comprehensive multi-sectoral strategies on child exploitation and abuse, including online, to ensure effective prevention, early detection and intervention, at national as well as at devolved levels, in Overseas Territories and Crown Dependencies;*
 - (c) Implement the recommendations of the Marshall Inquiry into child sexual exploitation in Northern Ireland;*
 - (d) Further develop comprehensive services to support children who are victims or at risk of sexual exploitation and abuse;*
 - (e) Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims;*
 - (f) Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.*

Asylum-seeking, refugee and migrant children

76. *With reference to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party:*
- (a) Systematically collect and publish disaggregated data on the number of children seeking asylum, including those whose age is disputed;*
 - (b) Establish statutory independent guardians for all unaccompanied and separated children throughout the State Party;*
 - (c) Conduct age assessments only in cases of serious doubt through multidisciplinary and transparent procedures taking into account all aspects, including the psychological and environmental aspects of the person under assessment;*
 - (d) Cease the detention of asylum-seeking and migrant children;*
 - (e) Review its asylum policy in order to facilitate family reunion for unaccompanied and separated refugee children within and outside of the State party, including through implementation of the EU Dublin III regulation;*
 - (f) Provide sufficient support to migrant, refugee and asylum-seeking children to access basic services;*
 - (g) Review the Immigration Act (2016) in order to ensure its compatibility with the Convention;*
 - (h) Ensure that when the return of children occurs, this happens with adequate safeguards, including a formal best interests determination, effective family tracing that includes individual risk and security assessments, and appropriate reception and care arrangements.*

Child victims and witnesses of crimes

82. *The Committee recommends that the State party fully implement the Committee's recommendations on the initial report of the State party (CRC/C/OPSC/GBR/CO/1), provided in its concluding observations on the Optional Protocol on the sale of children, child prostitution and child pornography in particular that the State party:*

- (a) Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol and that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol;*
- (b) Strengthen the National Referral Mechanism for identifying trafficked and exploited children which is embedded in existing child protection procedures;*
- (c) Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including establishing a clear obligation of non-prosecution, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;*
- (d) Operationalize the provision of a competent and statutory guardian during the criminal justice process;*
- (e) Revise its legislation to ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol.*

Safeguarding: The Context

It is important to acknowledge that the range of articles considered in this section set out some of the most fundamental rights that should be afforded to all children and young people in Northern Ireland – rights to life, to protection from harm, abuse and violence and special protection rights for some of our most vulnerable children, including migrant, asylum seeking and refugee children. There is a weighty obligation on Government to ensure that children's rights and best interests are fully realised across these areas.

This requires Government and statutory agencies to pay particular regard to the groups of children who are more likely to face barriers in accessing their rights to protection. Examples of this include children exposed to multiple adversities, living in homes affected by domestic abuse, alcohol and substance misuse and mental illness, children in care and children missing from home, care or education. The developments concerning Adverse Childhood Experiences (ACEs)⁹⁷ is welcome as Northern Ireland moves towards being more ACE-aware.

While it is important to recognise that child abuse is under-reported and that not all children who are subject to harm, abuse or neglect are known to statutory agencies⁹⁸, Government figures do provide us with an important source of information. At 31 March 2017 22,737 children in Northern Ireland were known to Social Services as a child in need and 2,132 children were placed on the Child Protection Register.⁹⁹ There has been an 11% increase in children on the Child Protection Register between 2014 and 2017 and 80% of those placed on the Children

⁹⁷ SBNI (2018) Draft Strategic Plan 2018 – 2020. Available at: <http://www.safeguardingni.org/consultation-draft-sbni-strategic-plan-2018-%E2%80%93-2022>

⁹⁸ See for example Bentley, H. et al (2017) How safe are our children? The most comprehensive overview of child protection in the UK 2017. London: NSPCC. The NSPCC estimated that in 2011 for every child on a child protection plan or register, another eight were experiencing maltreatment. OCCE (2015) Protecting children from harm: A critical assessment of child sexual abuse in the family network in England and priorities for action. London: OCCE. The English Children's Commission found that only 1 in 8 children who are sexually abused are identified by professionals.

⁹⁹ 2017 Children's Social Care Statistics for Northern Ireland 2016/17. Belfast: Department of Health.

Protection Register have been due to physical abuse, neglect or a combination of both. It is important to remain mindful of the increased likelihood that children who have been exposed to abuse will experience poorer outcomes in both childhood and as adults including poorer relationship, mental health, educational and physical health outcomes.¹⁰⁰ The imperative on Government to take all necessary measures to protect children is clear.

In recent years a number of structural reforms to safeguarding arrangements have been implemented following the identification of key failings in how agencies were discharging their statutory child protection duties.¹⁰¹

Reforms have included the introduction of a common assessment framework (UNOCINI), establishment of Gateway teams as contact points for referrals in all Health and Social Care Trusts, and the creation of a regional Safeguarding Board for Northern Ireland. Proposals to make further significant changes to children's social care structures have also been announced and include the dissolution of the regional Health and Social Care Board and the reconfiguration of the Safeguarding Board and the Children and Young People's Strategic Partnership.¹⁰² A focus on continuity and stability is central to effectively protecting children in times of organisational and structural change, and Government must ensure that a strong, independent, multiagency child protection body is in place.

Moving forward, it is important that agencies across Northern Ireland better understand how well our child protection

system is working, and can identify the key challenges the system faces in order to improve protection for children and young people. This assessment of safeguarding arrangements should be reported in line with the statutory duties of relevant authorities as well as against obligations under the Children's Services Co-operation Act (Northern Ireland) 2015. These arrangements must be accompanied by the commencement of a statutory multiagency child death review process in line with Section 3(5) of the Safeguarding Board Act (Northern Ireland) 2011.

Child Sexual Exploitation

A number of more recent reports in Northern Ireland have highlighted concerns about how well safeguarding arrangements protect children in particular circumstances, most notably in relation to Child Sexual Exploitation (CSE)¹⁰³ and this has been a key focus of NICCY's recent work.

The Independent Inquiry into Child Sexual Exploitation in Northern Ireland was established in 2013, following the police investigation Operation Owl into cases of CSE involving twenty two 'Looked After Children'. The Inquiry report was published in 2014 and made 77 wide ranging recommendations across health and social care, policing and justice and education which, if implemented, would better prevent CSE in Northern Ireland, more effectively protect and support young people who had been subject to exploitation and secure the improved investigation and prosecution of perpetrators.¹⁰⁴

¹⁰⁰ Meadows P. et al (2011) The Costs and Consequences of Child Maltreatment. London: NSPCC.

¹⁰¹ RQIA (2011) A Review of Child Protection Arrangements in Northern Ireland: Overview Report; Toner H. (2008) Independent Review of Agency Involvement with Mr Arthur McIlhill, Ms Lorraine McGovern and their children. Belfast: DHSSPS; Boyd D. (2008) Report of the Independent Inquiry Panel to the Western and Eastern Health and Social Services Boards – Madeline and Lauren O'Neill. WHSSB and EHSSB; the Social Services Inspectorate Report (2006) Our Children and Young People – Our Shared Responsibility. Belfast: SSI.

¹⁰² 2015 Health and Social Care Reform and Transformation – Getting the structures right consultation, DoH. Available at: <https://www.health-ni.gov.uk/consultations/health-and-social-care-reform-and-transformation-getting-structures-right> 2017 Adoption and Children (Northern Ireland) Bill consultation, DoH. Available at: <https://www.health-ni.gov.uk/consultations/adoption-and-children-northern-ireland-bill>

¹⁰³ Marshall K. (2014) Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry. Belfast: RQIA; Prof Pinkerton J. et al (2015) Getting Focused and Staying Focused: 'Looked After Children' Going Missing and Child Sexual Exploitation, A Thematic Review. Belfast, QUB; HMIC (2016) PEEL: Police effectiveness: vulnerability, An inspection of the Police Service of Northern Ireland 1-5 February 2016. HMIC.

¹⁰⁴ K. Marshall (2014) Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry. Belfast: RQIA.

Appendix 1



NICCY Comments 20 February 2017

Please note NICCY is not commenting on all recommendations but highlighting some examples of concern. These comments accompany NICCY's November 2016 paper.

Second Composite CSE Implementation Plan Progress Report

1st October 2015 to 30th June 2016

Second Composite CSE Implementation Plan Progress Report - 1st October 2015 to 31st March 2016

1

The Departments of Health, Education and Justice committed to developing plans to implement recommendations and to publish six monthly progress reports on implementation with completion in November 2017. Following a 2015 seminar in which NICCY brought together the Chair of the Independent Inquiry, Departmental and statutory leads and a range of practitioners to discuss the Inquiry recommendations, NICCY undertook a detailed review of CSE Implementation Plans. This highlighted serious concerns that plans were fragmented, inconsistent and needed to directly address the substance of the recommendations and also that independent oversight should be in place to give assurance that statutory responses to CSE were improving.¹⁰⁵

To date, Departments have published only two rounds of Progress Reports which cover the period up to 30 June 2016. In examining these, the Commissioner has reiterated earlier concerns that Plans and Progress Reports have not provided a robust framework to take forward learning from the Inquiry or demonstrated that real improvements in tackling CSE have been achieved.¹⁰⁶ For example, to date there is no published profile or prevalence data of CSE in Northern Ireland, no proposals to strengthen legal protections for all under 18s have been brought forward and progress against the range of Inquiry recommendations tasked to the Safeguarding Board has not been reported. It is of growing concern to NICCY that Departments have assessed an increasing number of recommendations as fully implemented and completed without substantiating evidence.

¹⁰⁵ NICCY Review of CSE Implementation Plans available at: <https://www.niccy.org/publications/2015/october/22/reflections-on-child-sexual-exploitation-action-plans/>

¹⁰⁶ NICCY Review of CSE Progress Reports available at: <https://www.niccy.org/publications/2016/november/18/review-of-government-child-sexual-exploitation-progress-reports/>

Departments have concluded that, in the absence of Ministers, the third round of Progress Reports cannot be released and NICCY has written to the Department of Health to highlight concern about this decision. There is an urgent need for Progress Reports to be placed into the public domain and to give assurance that the Inquiry recommendations have been fully implemented and are ensuring that children and young people are better protected from CSE today.

Calls to Government (Safeguarding)

Government must ensure that all children are safe and protected from harm through:

- 1. In reviewing the arrangements for the Safeguarding Board and Children and Young People's Strategic Partnership, ensure that a strong, independent, multiagency child protection body is in place;**
- 2. Commencing a statutory multiagency child death review process in line with Section 3(5) of the Safeguarding Board Act (Northern Ireland) 2011; and**
- 3. Publishing CSE Progress Reports providing assurance that the Independent Inquiry recommendations have been fully implemented.**

Children and families subject to immigration control: the context

Children and families subject to immigration control may be asylum seeking, refugees or migrants and children may be unaccompanied or 'separated'. They are subject to a complex range of processes which require UK and devolved agencies to work effectively across their respective remits, and children and families will need to navigate the asylum and immigration system, as well as seeking access to basic services in Northern Ireland. Separated children should become 'looked after' and accommodated by Health and Social Care Trusts.

Between 2000-2014 around 175,000 long term international migrants (from outside the UK) came to Northern Ireland. While 143,000 left, resulting in net migration of 32,000, the number of newcomer pupils in schools rose by just under three-quarters in the second half of this period.¹⁰⁷ In relation to individuals seeking asylum from persecution, disaggregated data for Northern Ireland is not published in full by the Home Office, although other estimates suggest that in, for example, 2015 just under 200 applications for asylum were made here, representing less than 1% of the UK total.¹⁰⁸ We note that disaggregated immigration and asylum data should be made available.

In addition to the range of barriers faced by asylum seekers and refugees, for instance, in accessing appropriate healthcare, an adequate standard of living and an effective education,¹⁰⁹ we note particular concerns about the vulnerability, including to exploitation, of appeal rights exhausted and destitute asylum seekers and the intention of the Immigration Act (2016) to further restrict access to support, including for those with dependent children. NICCY calls on the UK and Northern Ireland Governments to ensure that the rights of all children, including those of destitute asylum seekers, are fully protected and they receive the support they need.

¹⁰⁷ RAISE (2016) International Migration in Northern Ireland: an Update. Belfast, NIA.

¹⁰⁸ Law Centre NI (2015) How many asylum seeker and refugees are there in Northern Ireland? Briefing

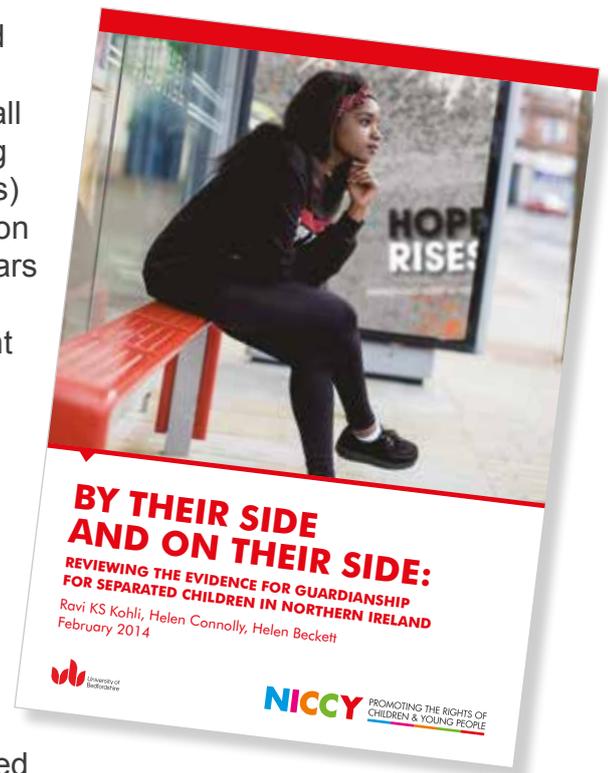
¹⁰⁹ Murphy F. and Vietan U.M. (2017) Asylum Seekers and Refugees' Experiences of Life in Northern Ireland. Belfast: QUB.

Separated children

Traditionally, low numbers of separated children have arrived in Northern Ireland (for example, 13 children in 2015-2016), and NICCY acknowledges that Government has recently sought to improve arrangements to protect and support this group, particularly in the context of the high proportion of separated children who went missing in the period from 2008-2015.¹¹⁰ However, agencies must ensure strong and responsive arrangements for separated children are in place, including provision of a range of safe placement options and access to specialist legal advice in regard to their immigration status and should publish data regarding the profile of separated children and outcomes secured for them, including in relation to durable solution.

In recognition of the particular vulnerabilities of separated children¹¹¹, to trafficking and exploitation, NICCY warmly welcomed the provision of an independent Guardian for all separated children in Section 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.¹¹² The Guardianship provision was commenced on 1 April 2018, almost two and half years later than anticipated. The Government should ensure that all separated children have access to an independent Guardian.

While Northern Ireland is participating in the UK Government Syrian Vulnerable Person Relocation Scheme (to date over 900 family members have been received in Northern Ireland¹¹³), NICCY is deeply disappointed that, in the absence of a functioning Executive, authorities have not committed to participating in any of the three transfer programmes for unaccompanied children, currently being operated by the UK Government. In relation to the transfer of separated children into the UK under Section 67 of the Immigration Act 2016 (or the Dubs Scheme named after Lord Dubs), the Commissioner provided a Witness Statement to support the Judicial Review of the Home Office, taken on behalf of Help Refugees Ltd who have recently been granted leave to appeal the English High Court ruling.¹¹⁴ The National Transfer Scheme, which is provided for under Section 69 of the 2016 Act to transfer unaccompanied children within the UK, was extended through Regulations to devolved jurisdictions in February 2018¹¹⁵. NICCY notes with concern that again in the absence of a devolved Government, this jurisdiction has not engaged in discussions or developments to support separated children being transferred to Northern Ireland. Government should seek to support the transfer of separated children to Northern Ireland in cases where this would meet their best interests.



¹¹⁰ Assembly Written Question 466/16-21 documents 10 children arrived in 2013-14, 17 in 2014-15 and 13 in 2015-16. Of 62 recorded separated children arriving in Northern Ireland between 2008 and 2015, 26 went missing and 20 remained missing at June 2016.

¹¹¹ Kohli R. et al (2014) *By Their Side and On Their Side: Reviewing the evidence for Guardianship for Separated Children in Northern Ireland*. Belfast: NICCY

¹¹² NICCY notes that all children, not only those who are subject to immigration control, may be at risk of trafficking and exploitation. In relation to the National Referral Mechanism for potential victims of trafficking, we urge the Department of Justice and Home Office to bring forward proposals to ensure that children will be referred into a single mechanism within child protection arrangements as recommended by J. Oppenheim (2014) *Review of the National Referral Mechanism for victims of human trafficking*, London: Home Office.

¹¹³ Department of Communities (2018) *Syrian Vulnerable Persons Relocation Scheme – April 2018*. Available at: <https://www.communities-ni.gov.uk/publications/syrian-vulnerable-persons-relocation-scheme>

¹¹⁴ In January 2018 Help Refugees were granted permission to appeal after losing legal action against the Home Office in relation to its implementation of the 'Dubs' Scheme for unaccompanied children. This include lack of consultation and engagement with Northern Ireland.

¹¹⁵ 2018 No.153 *The Transfer of Responsibility for Relevant Children (Extension to Wales, Scotland and Northern Ireland) Regulations 2018*.

Calls to Government (children and families subject to immigration control)

1. The UK and Northern Ireland Governments must ensure that the rights of all children, including those of destitute asylum seekers, are fully protected and they receive the support they need;
2. The Government must ensure that all separated children have access to an independent Guardian; and
3. Government should seek to support the transfer of separated children to Northern Ireland in cases where this would meet their best interests.

Bullying: The Context

Article 19 of the UNCRC states that,

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The 2016 the Committee on the Rights of the Child recommended that the Government,

*“Intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, building capacities of students and staff members to respect diversity at school, improving students’ conflict resolution skills, conducting regular monitoring of incidences of bullying at school, and involving children in the initiatives and monitoring aimed at eliminating bullying”*¹¹⁶

The Addressing Bullying in Schools Act (Northern Ireland) 2016 received Royal Assent on 12th May 2016, but is not expected to be commenced until the 2018 – 19 academic year. The Act provides a common definition of bullying, a requirement for all grant-aided schools to record all incidents of bullying, and a requirement for each Board of Governors to designate one or more members, with specific responsibility for anti-bullying policies and their implementation within the school. NICCY has concerns that schools will continue to have operational freedom of school discipline matters, including recognising and classifying incidents as ‘bullying behaviour’, and that the new duty relates only to pupil on pupil bullying.

¹¹⁶ Para 48(a), *Op cit* 3.

The Institute for Conflict Research found that transphobic bullying is a significant problem in schools. Experiences of transphobic bullying were commonly found to involve sustained verbal abuse, which was perpetrated by pupils of all ages, frequently in public spaces with many witnesses. On occasions, young people reported that staff who were aware that bullying was occurring, did not offer support or attempt to end the harassment. The research found that typically staff lacked the appropriate awareness and knowledge to respond to incidences of transphobic bullying, and that often a school's reaction is to view the young person as the problem rather than the bully. So they are prepared to allow the young person being bullied to drop out of school rather than address the bullying. The report found that many young transgender people in Northern Ireland are dropping out of education permanently because of the negative impact transphobic bullying has on their lives, and the inability of schools to adequately support them.¹¹⁷

► **Case Study:** NICCY was approached by a trans young person directly who was being prevented from wearing trousers in his school, as he was attending an all-girls post primary school where a school skirt was the mandatory uniform. The young person felt like he was being discriminated against, and that the school did not really understand the psychological impact that having to wear a skirt would have on him. The young person asked us to meet with the school to try to guide them in their approach in a child's rights compliant way. We were able to mediate a compromise between the young person and the school.

There is no common definition of cyberbullying, nor is there a legislative framework or overarching policy to address the issue in Northern Ireland. There is therefore a lack of clarity in Northern Ireland with regard to the legal position regarding the duty of care owed by schools in cases of cyberbullying, where in the majority of cases, the bullying behaviour by pupils is occurring both outside school hours and outside the school premises. Research has highlighted the need for government to provide a clear legal and policy framework which would contribute to greater understanding and more effective responses to cyberbullying in schools throughout Northern Ireland¹¹⁸, as well as greater strategic co-ordination of local online safety work, including the accessibility of online safety messages for the young people themselves, as well as their parents.¹¹⁹

In the absence of a legislative framework for e-Safety in Northern Ireland, the National Children's Bureau (NCB) was commissioned by the Safeguarding Board for Northern Ireland (SBNI) to develop the first e-Safety Strategy and Action Plan for children and young people in Northern Ireland. The strategy aims to support children and young people to take advantage of the online world, while ensuring they are equipped to manage the risks they might face.¹²⁰ Following drafting, the completed strategy was submitted to the Executive Office in December 2016 for consultation approval, but this has been delayed. It is hoped that when a Northern Ireland Executive is in place, approval to consult will be one of the first actions taken.

¹¹⁷ Ruari-Santiago McBride, 'Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland' Institute for Conflict Research, 2013.

¹¹⁸ Cyberbullying and the Law, Dr Noel Purdy and Dr Conor Mc Guckin, October 2013.

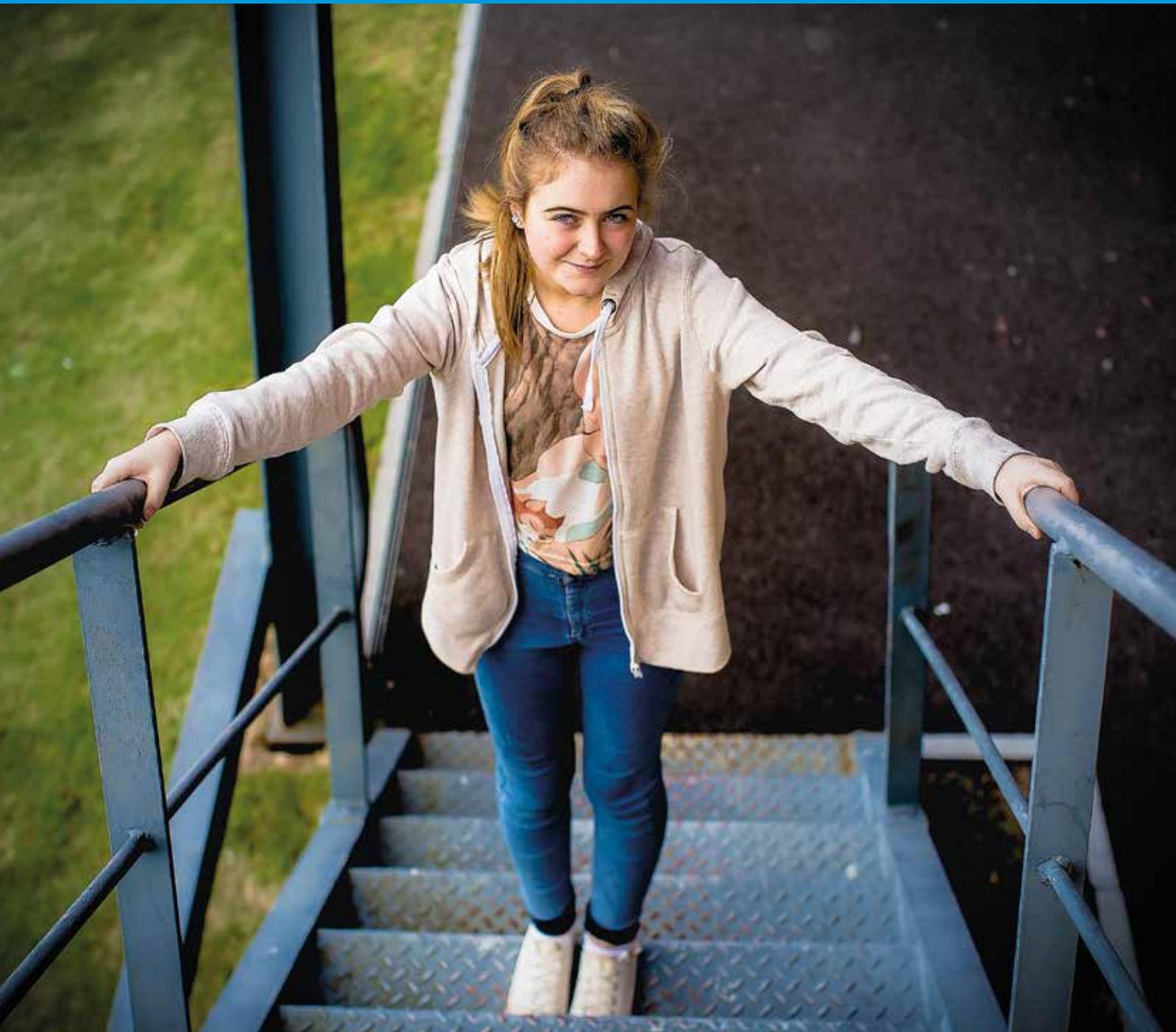
¹¹⁹ An exploration of e-safety messages to young people, parents and practitioners in Northern Ireland Prepared by the National Children's Bureau Northern Ireland (NCB NI) on behalf of the Safeguarding Board for Northern Ireland (SBNI), January 2014.

¹²⁰ <https://www.ncb.org.uk/northern-ireland/projects-and-programmes/developing-e-safety-strategy>

In 2017/18 bullying accounted for 14% of the education-related enquiries received into our Legal and Investigations service. The persistently high levels of reported bullying are deeply concerning.

Calls to Government (Bullying)

- 1. Bullying remains a significant issue for many children and young people in Northern Ireland. All children should be protected from violence and harm, including when using technology, social media and the internet. Efforts to tackle bullying and violence in schools should be intensified and prioritised;**
- 2. The 'Addressing Bullying in Schools Act (Northern Ireland) 2016' must be commenced. The Education Authority and schools should ensure the consistent and robust implementation and monitoring of anti-bullying policies and compliance with the Act; and**
- 3. Work on the urgent implementation of the draft e-Safety Strategy and Action Plan for children and young people in Northern Ireland must be taken forward without delay. A comprehensive overarching policy on cyberbullying should also be progressed as a matter of priority in order to keep children safe from harm.**



7.5 YOUTH JUSTICE

Youth Justice: The Context

The Youth Justice System in Northern Ireland recognises that children have a different status than that of adults. It therefore has separate policies and processes which apply to children and young people, and indeed states that diversion and early intervention are key. There have been significant and positive developments in the Youth Justice system in Northern Ireland since 1998.

Following the devolution of Justice to the NI Assembly, the then Minister for Justice launched the independent “Review of the Youth Justice System in NI”.¹²¹ It was required to take into account international standards, including the UNCRC. The review published its report and made 31 recommendations in September 2011. 29 recommendations were accepted, one partially accepted, another not accepted and a three year implementation process begun. The most significant recommendations included raising the age of criminal responsibility (No. 29); introduce the best interests principle in Youth Justice legislation (No. 28); NI Government should place an emphasis on early intervention (No.s 1-3); reduce number of non-sentenced young people in custody (No.s 8, 9, 18); ensure equity between looked after and non-looked after children when entering custody (No. 19); reduce delay and introduce statutory time limits for disposal of cases (No.s 14, 15); no children to be accommodated in Young Offenders Centre (No.16), and better collaboration within the Criminal Justice System and across statutory agencies (No.s 22 – 25).

In May 2015 DoJ launched a Scoping Study to continue the work of the YJR. Regrettably the work on the YJR had not been completed, and this was confirmed in December 2015 by the Criminal Justice Inspector, who formally assessed that 59% of accepted recommendations had been achieved at that time. Of the recommendations identified above, only the best interests and no child accommodated in the YOC (although this remains to be enshrined in legislation) have been achieved. Therefore strategic progress has been limited, with no formal consultation or publication of the work undertaken as part of the Scoping Study process, which will complete and indeed enhance the work of the YJR.

In June 2017, the NI Audit Office published “Managing Children who Offend” which examined the cost of youth justice alongside the strategies and interventions used to address offending by children. The Auditor General found that whilst first time offending by children had reduced, a lack of reliable data, including reoffending statistics, make long term analysis of effectiveness of the Youth Justice System difficult. He also found that there was a lack of strategic direction and collaboration across government. Crucially the report found that the YJA could not “assess their cost-effectiveness and cannot currently demonstrate that the interventions to reduce offending by young people represent value for money”.¹²²

Safeguarding and promoting the rights of children and young people involved with the Criminal Justice System presents significant challenges, within a society that often views the justice system through the prisms of victim and offender.

¹²¹ A Review of the Youth Justice System, Department of Justice, 2011

¹²² Managing Children Who Offend, NIAO, July 2017

However a child's rights approach requires the state to see the whole child, not just the child who offends. Such an approach is more likely to reduce offending and re-offending by children.¹²³

In 2016-17 the Youth Justice Agency worked with 1032 young people. 139 individual young people were held in Woodlands Juvenile Justice Centre (the custodial centre for children in NI), and there were 1539 referrals (comprising of 893 individual young people) to the community based youth justice services. 81% of all young people involved with the Youth Justice Agency were males.¹²⁴

Best interests

Article 3

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

The amendment in 2015 of the Justice (NI) Act, 2002 to introduce the best interest principles as a core aim of the Youth Justice System is welcome, and to be applauded. However there is little evidence as to how this has been implemented across all the relevant criminal justice agencies. The YJA statement of purpose and values does not include this statutory obligation, nor does the Annual Report¹²⁵ outline how it has the best interests of the child as the primary consideration, in the work it undertakes.

Delay

The issue that most animated the YJR group was the “unconscionable” levels of delay within the Youth Justice System. They made a clear recommendation that “Statutory Time Limits (STLs) should be introduced for all youth cases, providing a maximum period from arrest to disposal of 120 days”.¹²⁶ They went on to state that it should be introduced in the next Justice Bill, with full implementation a year later. Since the publication of the YJR, there have been three Justice Acts¹²⁷ passed by the NI Assembly, none of which introduced STLs for youth justice cases. The DoJ have been working to address this issue, and issued consultations in 2014 and 2016, where it was asserted that primary legislation would be required. Piecemeal measures such as summons reform have been introduced, and the latest available statistics from the DoJ indicate that there has been no improvement in delays for youth justice cases.¹²⁸ Despite the fact that less youth cases are progressing to courts, the median number of days taken increased between 2015/16 and 2016/17.

The YJR were extremely forthright in 2011, and it is unacceptable that 7 years later there is no evidence of any progress.

¹²³ Key Messages from the Centre for Youth and Criminal Justice, CYCJ, April 2018

¹²⁴ YJA Annual Workload Statistics 2016/17, Statistical bulletin 28/2017, DoJ, Sep 2017

¹²⁵ Youth Justice Agency Annual report, DoJ 2016/17

¹²⁶ A Review of the Youth Justice System, Department of Justice, 2011

¹²⁷ <https://www.legislation.gov.uk/ni/a>

¹²⁸ <https://www.justice-ni.gov.uk/publications/r-and-s-bulletin-2-2018-case-processing-time-criminal-cases-dealt-courts-ni-2016-17>

Custody

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

Concluding Observations, 2016

- 79 (d) Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children;*

All children imprisoned in Northern Ireland are accommodated in the Woodlands Juvenile Justice Centre. There have been tangible improvements during the last two decades in custodial facilities and level of care, as evidenced by CJINI Inspection Reports. However the reduction of resources mean that progress may be at risk.¹²⁹ The JJC accommodates all children deprived of their liberty through the Criminal Justice System in operational accordance with the YJR recommendation. Legislation is required to ensure compliance with article 37(c) of the UNCRC, and that no child is accommodated in an adult prison.

Article 37 (b) states that imprisonment and detention of children shall be as 'a measure of last resort', however evidence would indicate that there is still considerable work to be done in this area. In 2016-17 only 8% of young people in the JJC were sentenced, with the remaining 92% either there on PACE or remand.¹³⁰

NICCY has intervened in a number of legal cases, which sought to clarify and highlight the extent of the duties owed by the Health and Social Care Trusts, to children who are seeking bail and are in need of accommodation. Most recently, we intervened in a case which has underlined the absolute duty on Health and Social Care Trusts to provide accommodation within a reasonable time, and gave guidance as to how the suitability of the accommodation should be assessed.¹³¹

¹²⁹ An Announced Inspection of Woodlands JJC, CJINI, May 2015

¹³⁰ YJA Annual Workload Statistics 2016/17, Statistical bulletin 28/2017, DoJ, Sep 2017

¹³¹ [2018] NIQB 34

Regardless of the number of discussions, processes, plans and recommendations, there has been a 10% increase of the proportion of young people in custody, who were looked after between 2015-16 and 2016-17 to 39%,¹³² demonstrating no progress since the YJR recommendation in 2011.

Another concerning statistic is that 67% of young people in custody in 2016-17 identified as Catholic, with 17% as Protestant (the remaining equally other religion, no religion or unknown).¹³³ There is no indication from the Youth Justice Agency or the broader Youth Justice System of an understanding of the cause of these disparities, or effort to address them.

As established by the NIAO report, there is insufficient evidence with regards to how the JJC supports young people to reduce or cease offending, and the latest statistics demonstrate that 72% of sentenced young people reoffend.¹³⁴ Bearing in mind that the majority of young people are not sentenced, there is no evidence provided for outcomes for young people for the remaining young people in custody.

Minimum Age of Criminal Responsibility (MACR)

Article 40 (3) (a)

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

Concluding observations, 2016

79 (a) Raise the minimum age of criminal responsibility in accordance with acceptable international standards;

The age at which children can be held criminally responsible is 10 years in Northern Ireland (as well as in England and Wales). The UN Committee on the Rights of the Child have consistently raised the issue of the age of criminal responsibility across the UK. 2016 was no exception.

In 2011 the Youth Justice Review made a clear recommendation that the Minimum Age of Criminal Responsibility (MACR) should be raised to 12, with immediate effect, and then further consideration should be given to an increase to 14 within 3 years.¹³⁵ Despite the acceptance of this recommendation by the DoJ, and some effort to attain political consensus, there have been no formal processes to assess public opinion through the launching of a formal consultation on policy and legislative changes.

Whilst a welcome initiative, NICCY does not consider the DoJ's suggestion of age-dependent disposals (eg custody) as an appropriate alternative to fulfilling the states obligation, to realise the rights of the child with regard to the age of criminal responsibility.

¹³² Ibid 9

¹³³ Ibid 9

¹³⁴ Adult and Youth Re-offending in NI (2014/15 Cohort) Research & Statistical Bulletin 29/2017, DoJ, Oct 2017

¹³⁵ Rec 29, A Review of the Youth Justice System, Department of Justice, 2011

Stop and Search

Article 16 Right to Privacy

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Concluding Observation

38. (b) *Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;*
 - (c) *Regularly collect, analyse and publish data relating to the use of stop-and-search checks on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.*

When engaging with young people one of their biggest concerns is the use of 'Stop and Search' in their community. They believe that they are discriminated against and treated with disrespect, which may exacerbate an already tense situation. Whilst PSNI have a clear policy commitment to children's rights, this means nothing if when they engage with young people in routine operations, it has the opposite effect. It is these experiences that shape the views of young people, their families and communities. These experiences also reduce the likelihood that a young person will have confidence in the PSNI, if they are victims of crime in the future.

Stop and Search is an accepted, if often contentious, policing tool across all police services in the UK. 12% of all Stop and Search activities involved young people under the age of 18.¹³⁶ Police services around the UK will assert that Stop and Search is effective for preventing terrorism, but it is under PACE, Misuse of Drugs (68%) and Firearms legislation which most impact on young people. Stop and Search under these provisions makes up for 70% of the operations.

Recent evidence indicates that young people have a variety of experiences when subject to Stop and Search by PSNI. The Young Life and Times Survey¹³⁷ showed that over two thirds of young people were not given a reason when they were stopped. 90% were not given a receipt or reference, even though in 57% of cases the name and/or address of the young person were recorded in the officer's notebook. However 60% of young people felt that they were treated fairly by the police.

The question remains with regards to the purpose of Stop and Search operations. The PSNI reasonably suggest that arrest and prosecution cannot be the only measure used for a successful outcome of such activities. They state that prevention and deterrence, alongside supporting young people vulnerable to drug and alcohol misuse as other outcomes.¹³⁸

¹³⁶ PSNI, Stop and Search Statistics (2016/17), 31st May 2017

¹³⁷ YLT to be launched end of May.

¹³⁸ www.thedetail.tv/articles/psni-urged-to-reconsider-use-of-stop-and-search-on-children

It is accepted that not all the above objectives (e.g. deterrence and prevention) are measurable, but others are (e.g. safeguarding, diverting, preventing and detecting non-security crime). The only outcome information available is arrest, and in 2016-17 of the 31,274 people stopped and searched, 6% were arrested; this figure rises to 8.5% of operations undertaken under PACE, Misuse of Drugs and Firearms legislation.

Unlike England we have no publicly available information with regard to conviction or disposal outcomes.

The assertion that Stop and Search is an effective policing tool, that meets a range of objectives, is not a plausible one.

Calls to Government

Government must ensure that Northern Ireland's Youth Justice System is child right's compliant, as was intended by the Youth Justice Review, and must implement all the recommendations of the Review and must specifically:

- 1. Department of Justice must ensure it monitors how it is fulfilling its statutory obligations to ensure adherence to the best interests of children involved with the youth justice system. Data must include:
 - a) Custody as a last resort and for least possible time;**
 - b) Section 75 monitoring of young people;**
 - c) Levels of collaboration and co-operation with other children's services;**
 - d) Improvement in levels of delay; and**
 - e) Participation of children and young people in design and delivery.****
- 2. Publish proposals to raise the minimum age of criminal responsibility to 14 years immediately;**
- 3. The PSNI must demonstrate the purpose and outcomes of all Stop and Search operations involving children and young people, and must also improve the quality of engagement with young people; and**
- 4. The Youth Justice System must publish annual performance data, demonstrating tangible outcomes for children and young people involved with all their services. This data must be based on indicators proven to contribute to the reduction of offending by children and young people.**



7.6 UK WITHDRAWAL FROM THE EU - 'BREXIT'

UK WITHDRAWAL FROM THE EU - 'BREXIT': The Context

The referendum outcome in favour of the UK exiting the European Union (EU) has potentially profound ramifications for the realisation of children's rights in Northern Ireland. Currently the negotiations between the UK Government and the EU are ongoing. Therefore we continue to be faced with a range of 'unknowns' in relation to the eventual settlement and the actual impacts on children and their rights.

In the months following the referendum debates centred around industry and the impact of goods and service, with little discussion about children and young people. Therefore NICCY along with our counterpart in the Republic of Ireland, the Ombudsman for Children's Office (OCO), brought together a group of young people from both sides of the border to plan an event to support the **'voice of young people'** in the Brexit process. At the "It's Our Brexit Too" Conference, 120 young people stated their sense of 'exclusion' and 'disenfranchisement' from an outcome that they had no vote in, but which will impact on their future.



In a House of Lords debate, Baroness Massey of Darwen asked whether children had been consulted *'If not, why not? Has an impact assessment on how Brexit will affect children been considered? If not, why not?'*¹³⁹

The "It's Our Brexit Too: Children's Rights, Children's Voices" report was published¹⁴⁰ (www.niccy.org/brexit) and members of the young people's steering group visited Westminster and Brussels to speak with key stakeholders and decision makers, including Members of the Brexit Committee, House of Lords and Members of the European Parliament and Taskforce 50. Dissemination of the key calls from young people is ongoing as is our engagement at a strategic level with all NI Government Departments, EU Commissions, Department of Foreign Affairs' All Island Civic Dialogues and with relevant Politicians and political parties.

The Draft Agreement issued by the EU Commission Taskforce¹⁴¹ sets out agreed areas and those outstanding areas subject to current negotiations on which Michel Barnier (EU Chief Negotiator) recently stated he hopes there will be *'substantial progress in time for June European Council... (to) continue the scoping of the framework for the future EU-UK relationship in parallel with wrapping up the final details of the withdrawal agreement.'*¹⁴² In December 2017 the EU and UK agreed the border would be kept frictionless. The achievement of this will be dependent on the final deal, but should this not be possible a "backstop" was agreed which would ensure that NI maintained full alignment with the rules of the EU single market and customs union, therefore maintaining the current arrangements with regards to North and South co-operation. Children and Young People will undoubtedly be impacted in a number of ways by the outcome of current negotiations as well as additional decisions and subsequent arrangements which follow in the agreed interim extended period.



¹³⁹ [https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion\(Withdrawal\)Bill](https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion(Withdrawal)Bill)

¹⁴⁰ www.niccy.org/brexit

¹⁴¹ https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-0_en

¹⁴² Michel Barnier article (on his recent visit to Northern Ireland), Belfast Telegraph 1 May 2018

The UK leaving the EU has implications for children and young people in relation to potential loss or regression of wide ranging rights protections built up over 44 years of EU membership. Much debate has been had over the ‘loss’ of the Charter of Fundamental Rights. Following a meeting with our Young People’s delegation, Baroness Lister¹⁴³ in a recent House of Lords debate, voiced her ‘strong opposition to the removal of the Charter of Fundamental Rights from retained EU law ... colleagues (had) made clear the damaging impact this is likely to have on children.’ Her amendment (70) went further than others in that it provided for ‘the full incorporation of ... the UN Convention on the Rights of the Child ratified by the UK’. Many of the rights protections of the UNCRC are ‘engaged’ in relation to the various aspects of Brexit; as previously called for, NICCY would very much welcome full incorporation of the UNCRC in line with the Committee’s Concluding Observations.

The Good Friday Agreement

*‘The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 (Belfast/Good Friday) Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union..’*¹⁴⁴

The Belfast/Good Friday Agreement (GFA) - an international treaty between the Governments of the UK and the Republic of Ireland - effectively brought an end to Northern Ireland’s violent conflict. It established a number of co-operation mechanisms i.e. North-South and East-West bodies, one of which was the Joint Committee¹⁴⁵ set up to consider human rights issues on the island of Ireland. A recent policy statement

to the UK and Irish Governments outlined 6 requirements for the final EU Withdrawal Agreement to meet the obligations of the GFA as follows:

1. Ensure no diminution of rights within the withdrawal agreement;
2. Safeguard the North-South equivalency of rights on an ongoing basis;
3. Guarantee equality of citizenship within Northern Ireland;
4. Protect border communities and migrant workers;
5. Ensure evolving justice arrangements do not water down rights; and
6. Ensure continued right to participate in public life for EU citizens in Northern Ireland.

The Committee sought assurances from both Governments that no rights would be diluted, outlined areas to be addressed to mitigate concerns around citizenship rights, and North-South equivalent equality and human rights protections, and made recommendations including:

- ▶ The Withdrawal Agreement to provide for the continuing North-South equivalence of rights, post-Brexit, as established under the 1998 Agreement;
- ▶ The EU seek a legal commitment to retaining the Charter of Fundamental Rights and that rights can be enforced by the Court of Justice of the EU in NI; and
- ▶ All the people of NI retain the right to stand and vote in European Parliament elections.

The GFA also guaranteed identity rights i.e. people living in Northern Ireland with the right to be British, or Irish or both, and an equivalence of rights for people on either side of the border. While this required changes

¹⁴³ [https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion\(Withdrawal\)Bill](https://hansard.parliament.uk/lords/2018-03-05/debates/AE7EB742-4BCD-4D00-B43D-AD7ED9A21911/EuropeanUnion(Withdrawal)Bill)

¹⁴⁴ Article 1 ‘Rights of Individuals’ in The Protocol on Ireland/Northern Ireland to the Draft Agreement on the withdrawal of the UK from the EU. TF50 (2018) – Commission to EU27. 19 March 2018

¹⁴⁵ Press release by IHREC from the Joint Committee on Human Rights 14 March 2018.

in legislation and structures, the changes were greatly facilitated by the fact that both States were members of the EU. Thus the UK leaving the EU has implications for the integrity of the Good Friday Agreement, as those in Northern Ireland identifying as Irish will retain EU citizenship, unlike those identifying solely as British.

The UK *'Northern Ireland and Ireland position paper'* stated *'As long as Ireland remains a member of the EU, Irish citizenship also confers EU citizenship, with all the rights that go with this.'* This is as true for the people of Northern Ireland who are Irish citizens - or who hold both British and Irish Citizenship - as it is for Irish citizens in Ireland'.¹⁴⁶ There is potential however, that Brexit will undermine the 'equivalence of rights' due to 'differentials' in EU rights and UK rights, for those who identify as British citizens. At a time of relative peace, when young people are increasingly striving to overcome differences, this could over time, exacerbate divisions between the two main identities in Northern Ireland despite the GFA stated birth right for people here *'to identify as British or Irish or both, as they may so choose; to equal treatment irrespective of their choice'*.

The Land Border on the island of Ireland.

The border between Northern Ireland and the Republic of Ireland is the UK's only land border with the EU. Moreover, it is a border which in the past, has been a source of contention and been heavily militarised during the conflict in Northern Ireland. However, since the Good Friday Agreement, considerable resources and efforts have been put into normalising the border region, removing the military infrastructure and ensuring the '4 fs' i.e. freedom of movement of people, goods, services and capital, facilitated by membership of the EU. The border has become 'seamless', allowing such movement on either side of the border.

Children and young people (and their families) currently travel across the border for a wide range of reasons, some doing this on a daily basis, and others less frequently. They cross the border to attend school or college, to access vital health services, to spend time with friends and family (particularly in cases of separated families) to go shopping, socialise or for leisure activities.

Some specialist health services are planned and delivered on an all-island basis, where children with congenital heart conditions can travel to Dublin for treatment. In addition, the European Health Insurance Card (EHIC) allows children and their families to access free or cheaper medical treatment when in other EEA countries; this however, is dependent on residency in a member state and we await decision as to if or how arrangements will be put in place to continue this post Brexit.

The Department for Education has calculated that around 500 children and young people travel across the border to go to school every day.¹⁴⁷ Research by the Ulster University estimated that an additional 1500 young people crossed each day to access college and others go to university across the border. It isn't clear whether Brexit will affect the status of these young people in relation to university fees. Many young people learning languages avail of the Erasmus + programme to visit other EU countries. While there is a desire for this to continue, it is not clear how this will be resolved.

A 'hard border' would limit their freedom of movement and access to vital services, family members, as well as damaging local border economies.

¹⁴⁶ HM Government 'Northern Ireland-Ireland Position Paper' 16 August 2017

¹⁴⁷ Information provided at NICCY meeting by Department of Education Representative on 12 April 2018.

While we have been assured there will be no return to a hard border, details on how this will be achieved remain unclear. The potential implications for freedom of movement and the stability of the peace settlement in Northern Ireland on the introduction of any form of border on the island of Ireland is causing grave concern to children and young people. Anxieties exist regarding the reintroduction of border checks, intrusive border infrastructure and the possibility of identification documentation being required to cross the border. Such developments would be extremely regressive and severely adversely impact on the day-to-day lives of children and young people and families living in the border region. Retention of the common travel area (CTA) has gone some way to allaying such fears, however, recent media coverage of a UK Border Force staff recruitment exercise¹⁴⁸ has only further contributed to fears and concerns on the question of the Irish border and its potential implications for children.

During and since the referendum there has been some evidence of increased racism and hostility towards ethnic minorities and migrants in Northern Ireland (and across the UK). Many EU/EEA nationals report facing anxiety and uncertainty as they consider the potential impact of Brexit on their future status.¹⁴⁹ The young people have been particularly concerned about this issue.

Concerns have also been raised that the border could become a target for paramilitary style organisations, and we would see a militarised situation return with the resultant disruption to lives particularly of children and young people and the wider population, in border regions.

Lord Browne of Ladyton following NICCY's visit to Westminster, reiterated that *'Brexit has consequences... to the hopes and aspirations of future generations..... particularly important*

on the island of Ireland and in the border communities, who suffered so much during the troubles.'

The Economy and impact on Standard of living

Various studies have indicated that the economy in Northern Ireland will potentially be more significantly affected if the UK leaves the customs union and single market.

Over preceding decades the fact that the UK and Ireland have both been members of the EU has enabled the integration of systems and resources across and between these islands, to ensure the success of a number of key industries including agriculture. Leaving the Customs Union and Single Market will have a particularly significant impact therefore on producers across the island of Ireland.

Northern Ireland has also been in receipt of a number of EU funding streams, including the EU Social Fund, PEACE funding and INTERREG funds. Moreover, given the importance of agriculture to the Northern Ireland economy, the loss of EU Farming subsidies (87% of farming income last year relied on CAP subsidies) is also likely to have a more significant impact on Northern Ireland's economy. While some funding streams, for example Horizon (Research and Development) and Peace Monies are to continue up until 2020 and 2027 respectively, the eventual loss of these will inevitably adversely impact on children and families across Northern Ireland unless the UK Government steps in.

Farming communities, rural and border communities and those who previously benefitted from EU funding, particularly in areas of high socio economic disadvantage, are likely to be disproportionately affected and may experience increased levels of child poverty.

¹⁴⁸ www.bbc.co.uk/news/uk-northern-ireland-43843345

¹⁴⁹ Institute for Conflict Research. 'Brexit and eYou': information for EU/EEA nationals

The Confederation of British Industry¹⁵⁰ has warned against *‘throwing away a generation or progress’* in NI since the GFA. Carolyn Fairbairn, CBI Director-General recently stated that *“with less than a year to go until the UK leaves the EU, the Government must not just declare that no hard border will return, but explain precisely how this will be achieved after Brexit... 20 years on from the Good Friday Agreement, we face a choice. To reaffirm the principle of consent that underpins that Agreement and its legacy of civil rights, prosperity and peace or to see a new division across the island of Ireland, with all that entails for people’s jobs, rights and livelihoods.”*

Security and Policing: Child Protection

There are approximately 80 EU instruments which entitle children to protection and welfare. Our land border exposes vulnerabilities to child abductions, child sexual exploitation, children going missing, and/or being trafficked to and through NI. Currently there is a high degree of co-operation across the EU in relation to tackling crime through ECRIS (European criminal records information sharing), Europol, SIS II (a database of real-time crime alerts), Eurojust and the use of the European Arrest Warrant.

Data sharing protocols are also important in pre-employment checks for those working with children and young people.

The PNSI and An Garda Síochána also collaborate and share intelligence across the island of Ireland. This is particularly important in safeguarding and protecting children and young people and vital that such mechanisms are available to do so.

The UK Government also announced last September it and the EU ‘must agree an “ambitious” new security treaty to combat terrorism and organised crime or the continent will face “increased risks” post-Brexit.’¹⁵¹

With the caveat that ‘nothing is agreed until everything is agreed’ we all must await the outcomes of current negotiations.

¹⁵⁰ CBI Press release 25 April 2018: NI Businesses have helped create over 160,000 extra jobs, unemployment is close to its lower ever, Irish product exports have risen at an average of 6% a year, year on year, for 20 years. And companies in NI generate £70bn a year in sales.

¹⁵¹ <https://www.ft.com/content/112c25f2-9c75-11e7-9a86-4d5a475ba4c5> Helen Warrell Financial Times September 2017

Calls to Government

Government must ensure no adverse impacts on children's and young people's rights and access to services as a result of UK's withdrawal from the EU ('Brexit') through the following:

1. All aspects of the Good Friday Agreement must be protected including the right of people in Northern Ireland to identify as British, Irish or both. Moreover, the commitment to safeguarding human rights and the principle of equivalency of rights across the island of Ireland must be ensured;
2. The UK Government, Irish Government and European Union must work together to avoid physical infrastructure being located at or around the UK-EU border on the island of Ireland;
3. Safeguarding our children and young people must be ensured through maintaining current or similar security, policing and justice mechanisms e.g. Europol, Eurojust, ECRIS, European Arrest Warrant and Data protocols;
4. The UK and Irish Governments must co-operate to ensure freedom of movement of people across the border is not impeded so that children, young people and their families continue to access services and facilities on either side of the border e.g. in relation to health, education, family life, sports, cultural and leisure activities; and
5. The UK Government (post-Brexit) should commit to the continuation of financial support currently provided to Northern Ireland by the EU including through agricultural subsidies, structural funds and grants which contribute significantly to the Northern Ireland economy, alleviate child poverty and promote adequate standards of living - with a particular focus on disadvantaged groups and communities.



7.7 LEGACY OF THE CONFLICT

Article 13(1) of the UNCRC states that:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

Article 19 of the UNCRC states that,

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

The Committee on the Rights of the Child in its examination of the UK Government's compliance with its obligations under the UNCRC, expressed its concern at the fact that in Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, and recruitment by such non-State actors.¹⁵²

The Committee recommended that the Government,

*"Take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks and from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice."*¹⁵³

The Legacy of The Conflict: The Context

The impact of the 'Troubles' and the divisions underlying it, continue to significantly impact on the lives of our children and young people, all of whom were born after the Good Friday Agreement. The communities most deeply affected by the Northern Ireland conflict are also those in areas with the highest rates of mental ill-health and child poverty, and the lowest levels of educational attainment. On a daily basis the children living in these communities deal with the ongoing impacts of a conflict not of their making, and which ended before they were born. Segregation continues to be a part of daily life for children and young people in Northern Ireland, in accessing services with segregated living significantly impacting on how they live their lives.¹⁵⁴ In Belfast, 98% of public housing is segregated into Protestant or Catholic areas.¹⁵⁵ Children are largely educated in separate schools, with only 7% of children attending integrated schools.¹⁵⁶

¹⁵² Para 48(b), CRC/C/GBR/CO/5

¹⁵³ Para 49(c), CRC/C/GBR/CO/5

¹⁵⁴ O. Hargie, A. O'Donnell, and C. McMullan Constructions of Social Exclusion Among Young People From Interface Areas of Northern Ireland, Youth Society, (2011).

¹⁵⁵ *Ibid.*

¹⁵⁶ www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integrationschools_pg.htm

► **Case Study:** NICCY was contacted by a family who had to leave their permanent home due to threats and intimidation of a sectarian nature. There were two children in the family of primary school age, who had been housed in temporary accommodation. The parents were very concerned about the upheaval to the lives of the children, so in order to provide consistency they wanted them to remain at their existing schools, despite the fact that their temporary accommodation was some distance away. We advised the parents regarding the eligibility criteria for home to school transport and assisted them to make an application for transport assistance. When this was initially refused by the Transport Department, we were able to further assist the parents to successfully appeal this decision. This meant both children were awarded transport assistance to ensure that they could continue to attend their existing school.

‘Paramilitary style attacks’

PSNI recorded security situation statistics from 1 April 2017 – 31 March 2018¹⁵⁷ show there were 87 casualties as a result of paramilitary style attacks, 7 fewer than the preceding year. This breaks down to 22 shootings (6 fewer than the previous year) and 65 assaults (1 less than the previous year). While the number of attacks has reduced considerably in comparison to the preceding decade (1998/9- 2007/8 numbered 2,142), this downward trend has not continued in the past 10 years (2008/9 – 2017/18 numbered 830) as can be seen in the table below (‘Total Casualties’ column).

Casualties as a result of paramilitary-style attacks 2008/09 – 2017/18

Financial Year	Shootings			Assaults			Total Casualties (Shootings and Assaults)
	Total	By Loyalist Groups*	By Republican Groups*	Total	By Loyalist Groups*	By Republican Groups*	
2008/09	20	2	18	41	28	13	61
2009/10	46	1	45	81	69	12	127
2010/11	33	0	33	50	34	16	83
2011/12	33	0	33	46	31	15	79
2012/13	27	1	26	36	27	9	63
2013/14	28	9	19	42	37	5	70
2014/15	36	6	30	58	42	16	94
2015/16	14	1	13	58	47	11	72
2016/17	28	3	25	66	56	10	94
2017/18	22	1	21	65	50	15	87

* Attribution is as perceived by PSNI based on the information available at the time of incident. Paramilitary style assaults/shootings that result in death are not recorded as casualties of paramilitary style attacks but are counted as ‘security related deaths’.

A PSNI analysis of statistics between April 1998 and June 2015 showed, in this period, there were 2,732 casualties as a result of paramilitary style attacks. Of those, 89 were suffered by children aged 16 years or under. 1,297 were suffered by young people aged between 18 and 24¹⁵⁸. In February 2017, representation was made to this Office following ‘paramilitary style’ shootings of two young people. These and broader ‘contextual’ issues were addressed with all relevant authorities – in line with our statutory duties – and also with political representatives and community organisations. Our work on this is currently ongoing.

¹⁵⁷ Police Recorded Security Situation Statistics Annual Report covering the period 1st April 2017 – 31st March 2018. PSNI Statistics Branch. Northern Ireland Statistics & Research Agency (NISRA).

¹⁵⁸ Answer to FoI request 2015/02350 reported in ‘HUMAN RIGHTS ANNUAL REPORT 2015’ Monitoring the compliance of the PSNI with the Human Rights Act 1998. <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/Human-Rights-Annual-Report-2015.PDF>

Intimidation

The media has also highlighted the trauma experienced by children who witness paramilitary style attacks.¹⁵⁹ A report¹⁶⁰ using figures obtained from the Northern Ireland Housing Executive (NIHE) showed that from 2012-2015 there were almost 1,300 cases of paramilitary intimidation which forced people out of their homes. This accounts for 70% of cases of intimidation from public housing over this period. This does not take into account incidents of forced paramilitary intimidation from other types of accommodation including private housing.

The NI Executive Action Plan on 'Tackling Paramilitarism' in response to the 'Fresh Start' 3 person panel on the disbandment of paramilitaries (report published June 2016) contains 43 recommendations.¹⁶¹ Delivery on these is ongoing following the NI Executive and Westminster Governments each committing £25 million over five years, a total of £50 million. NICCY is monitoring developments.

Shared History

Children's knowledge of the Northern Ireland conflict and opportunities to discuss and make sense of 'the Troubles' are limited. While school appears to be an important source of information for learning about the past, unless young people study GCSE History they will learn little specifically about the Troubles in school. The cut-off point many schools use when history is compulsory in the first three years of secondary school, is the partition of Ireland. Research highlights the views of children that 'stories passed down in families and communities, through grandparents and parents, or through murals, memorials and commemorations, act as continuous reminders of the past and of the impact of the conflict on "their community"... Some felt that these stories, images and events served as reminders of what each "side" had done to "the other" and perpetuated violence'.¹⁶²

Young people across different communities here have reported 'activity by non-state forces' to NICCY. They have stated that there is increasing recruitment to paramilitary organisations, often through coercion, as well as threats, intimidation and/or assaults.

Calls to Government

Government must urgently address the impact of the legacy of the conflict on children and young people through:

- 1 Ensuring the full and effective protection of children and young people from trauma, violence or mistreatment in their communities, including from all forms of violence by non-State forces as well as from recruitment by such forces;**
- 2 Addressing the continuing impacts of the conflict, including mental ill health, family breakdown, child poverty and educational under attainment and the provision of adequate support services to children and young people in their communities;**
- 3 Supporting children and young people to play a central role in building a peaceful future in Northern Ireland, recognising that over many years, children have acted as human rights defenders; and**
- 4 Information about the conflict should be provided to children and young people with a view to achieving a shared narrative about the conflict.**

¹⁵⁹ www.belfasttelegraph.co.uk/news/northern-ireland/teenager-shot-in-legs-surrendered-to-armed-attackers-when-he-heard-his-terrified-little-sister-cry-31003876.html

¹⁶⁰ Paramilitaries in Northern Ireland Forcing Hundreds from their Homes Each Year, Steven McCaffery, The Detail, 25th June 2015, <http://www.thedetail.tv/articles/paramilitaries-in-northern-ireland-forcing-hundreds-from-their-homes-each-year>.

¹⁶¹ <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

¹⁶² S. McAlister, D. Haydon, and P. Scraton (2013). "Violence in the Lives of Children and Youth in 'Post-Conflict' Northern Ireland." https://pure.qub.ac.uk/ws/files/17394874/CYE_Final_published_paper.pdf

Article 12 of the Convention on the Rights of the Child states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken on their behalf.

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others.

Articles 14 (Freedom of thought, conscience and religion), 15 (Freedom of association) and 17 (Access to information; mass media) also relate to their right to have a say in decisions affecting them.

The Concluding Observations¹⁶³ on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, 3rd June, 2016 made a series of recommendations relating to participation including:

Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national level, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities;

Fully involve children in planning, designing and monitoring the implementation of play policies and activities relevant to play and leisure, at community, local and national levels.

Ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.

Expedite the establishment of Youth Parliaments in all devolved administrations for children's effective engagement with national legislative processes on issues that affect them; and

Encourage the Government and devolved administrations to conduct consultations with children on the voting age. Should the voting age be lowered, the Committee recommends that the State party ensure that it is supported by active citizenship and human rights education in order to ensure early awareness of children that rights are to be exercised as part of citizenship, with autonomy and responsibility, and that the measure does not lend itself to undue influence.

Participation: The Context

Article 12 affirms that children are fully-fledged persons who have the right to express their views in all matters affecting them and requires that those views be heard and given due weight in accordance with the child's age and maturity. It recognizes the potential of children to enrich decision-making processes, to share perspectives and to participate as citizens and actors of change. The practical meaning of children's right to participation must be considered in each and every matter concerning children.

The right to participation is relevant to other rights, within the family, the school and the larger community context. For example, as one of "the persons concerned", the child should be heard

¹⁶³ <https://www.niccy.org/media/2536/un-concluding-observations-june-2016.pdf>

in any judicial or administrative adoption proceedings (Art 21). Children are entitled to be informed, have access to information and be supported in the use of basic knowledge of child health and nutrition (Art 24) so that they may enjoy their right to health.¹⁶⁴

Children's participation can form a key role in the area of their education. Article 28 indicates that education should give children the opportunity to develop their talents and abilities to their full potential, to gain confidence and self-esteem, to use their initiative and creativity, to gain life skills and take informed decisions. Children should be dynamic participants in the learning process and not solely recipients of knowledge.

The Commissioner for Children and Young People (NI) Order, 2003 is clear that the UNCRC has to be the guiding framework for NICCY's work. The Commissioner therefore takes very seriously the Concluding Observation where The UN Committee voiced concerns about the dearth of structures for the active and meaningful participation of children and young people, to give due weight to their views in designing laws, policies, programmes and services at local and national level.

Along with its own Youth Panel, NICCY meet children and young people regularly. They are generally concerned about a variety of issues affecting their lives and opportunities including their education; their health - especially their mental health; their communities and the impact of poverty. They are keen to have their particular views and opinions heard and to engage directly with key decision makers whenever possible.

It is concerning that matters directly affecting children and young people are not always being discussed with them as a matter of course, at least not in a meaningful way. There are some wonderful examples of engaging with children and young people, but we also know of many examples of tokenistic consultations, often planned as an afterthought.

Participation and engagement with children and young people must be viewed as an essential and indeed, positive opportunity to inform legislation, strategies, policies and services which ensure the promotion of the rights of all children and young people in Northern Ireland.

¹⁶⁴ <https://www.unicef.org/crc/files/Right-to-Participation.pdf>

Government actions to address participation

Past and contemporary legislation, strategies and policies have set the environment for participation with children and young people. Statutory developments, as listed below, have addressed the issue of children rights and referenced the UNCRC as a positive indicator for directional travel and levels of accountability.

The Children Order (Northern Ireland)

1995:¹⁶⁵ One of the main principles of the Children Order is that children should be kept informed about what happens to them and should be encouraged to take part when decisions are made about their future.

Section 75, Northern Ireland Act

1998:¹⁶⁶ Central to compliance with the statutory equality obligations under section 75 is the obligation on designated public authorities to carry out consultation with children and young people and the removal of barriers to meaningful consultation with this group.

Children's Services Co-operation Act (Northern Ireland) 2015 (CSCA):¹⁶⁷ With regard to participation with children and young people, two outcome areas are particularly relevant, i.e., 'Young people making a positive contribution to society' and 'Living in a society that respects their rights'.

Community Planning Statutory Guidance (2015):¹⁶⁸ By including the specific reference to engagement with children and young people in the Statutory Guidance, the Department has established a benchmark for good practice within the Northern Ireland Government structure.

Children and Young People's Strategy (draft):¹⁶⁹ The outcome areas for the Strategy mirror those identified in the CSCA. From a participation point of view, they are highlighted by Outcome Area 6 where a specific outcome is that "Children and young people should be given the opportunity and support to participate in decision-making on important matters which affect them and be confident in expressing their opinions - with the knowledge that their voice will be heard and responded to."

Priorities for Youth (2013):¹⁷⁰ The strategy states that 'Practitioners within individual units, projects and programmes will be required to demonstrate and provide evidence of how they have supported an ethos and culture of active participation, and how the young people are provided with opportunities to be involved in the design, delivery and evaluation of programmes/projects...' ¹⁷¹

DE Circular 2014/14 - Pupil Participation

Participation :¹⁷² the Circular explains "The Department is committed therefore to encouraging all schools to find meaningful ways of giving children and young people a voice, listening to them, respecting and responding to their views, and by doing so, enabling children and young people to understand that their opinions count. The education system exists for children and young people; ensuring their participation in that system and listening to their experiences helps them make the most of their education." ¹⁷³

¹⁶⁵ <http://www.legislation.gov.uk/nisi/1995/755/contents/made>

¹⁶⁶ <https://www.legislation.gov.uk/ukpga/1998/47/section/75/enacted>

¹⁶⁷ <http://www.legislation.gov.uk/nia/2015/10/contents/enacted>

¹⁶⁸ Circular LG 28/15 – Statutory guidance for the operation of community planning: <https://www.communities-ni.gov.uk/publications/circular-lg-2815-%E2%80%93-statutory-guidance-operation-community-planning>

¹⁶⁹ Pg.79, Children and Young People's Strategy 2017-2027 (draft): <https://www.education-ni.gov.uk/consultations/children-and-young-peoples-strategy-2017-2027>

¹⁷⁰ Priorities for Youth: <https://www.education-ni.gov.uk/publications/priorities-youth>

¹⁷¹ Pg. 24, Priorities for Youth, Department of Education, 2013; <https://www.education-ni.gov.uk/publications/priorities-youth>

¹⁷² DE Circular 2014/14: Pupil Participation: <https://www.education-ni.gov.uk/publications/circular-201414-pupil-participation-0>

¹⁷³ Page 1, DE Circular 2014/14 - Pupil Participation: <https://www.education-ni.gov.uk/publications/circular-201414-pupil-participation-0>

In the absence of a national participation strategy and any associated baselines of participation within formal and informal educational and community settings, it is almost impossible to estimate the numbers of children and young people involved in participatory activities. From a youth work perspective, figures available estimate that over 135,000 young people are involved in registered youth work, 37.6% of the population aged 4-25 – down 1.4% from the previous year.¹⁷⁴

However, in the last 20 years there has been an increase in the recognition and acceptance of children and young people's right to participate, and have their voice heard in the decision making process (see list above). Legislators, government departments and statutory agencies are increasingly acknowledging the UNCRC and the fact that, when listened to, children and young people can play a vital role in the planning and delivery of services.

However, there is still a journey to travel to reach this point. Engaging with children and young people in public consultation is still inconsistent and often an afterthought. Engagement with children and young people in the development of legislation, strategies and policies is sporadic, irregular and often relies on the individual rather than organisational practice. This was highlighted through NICCY's successful complaint¹⁷⁵ to the Equality Commission for Northern Ireland on the failure by The Executive Office to consult with children and young people appropriately when it was proposed they be excluded from Age Discrimination (Goods, Facilities and Services) protections.

In spite of NICCY's and children and young people's responses to the Civil and Family Justice Review¹⁷⁶, that there should be no journalists allowed in Family Court unless informed permission is given from the young person or child involved, the Review¹⁷⁷ recommended changes to ensure more openness and transparency and potentially more media access. Even though the young people's advice was not adhered to, the Review demonstrated a recognition of the views of young people but decided for other reasons to reflect them.

The DE Circular on Pupil Participation provides guidance for Principals and Boards of Governors on how to encourage pupil participation in decision making in schools, but there is no explicit DE policy in place to require that children and young people are involved in having a say in decisions that affect their lives within the school environment. This absence has been remarked on by both NICCY and the Committee for the Rights of the Child on a regular basis, in addition to the lack of progress to fully implement children and young people's participation in the education system beyond simple circle time or suggestion boxes. The UN Committee stated that Government should 'strengthen children participation in all matters of school, classroom and learning which affect them'.¹⁷⁸

NICCY's most recent report on the issue, produced in partnership with the NI Youth Forum – #Pupil Voice: Making A Difference,¹⁷⁹ reviewed pupil participation in schools. It reiterated the need for DE to encourage more meaningful pupil participation in schools, including through requiring schools to establish a schools council and for children's rights education to be integrated into the curriculum.

¹⁷⁴ A Statistical and Geographic Report of the EA Registered Youth Service 2016 Data Cycle; <http://www.eani.org.uk/EasySiteWeb/GatewayLink.aspx?allid=70938>

¹⁷⁵ Age GFS Section 75 Complaint, 2017; <http://www.niccy.org/gfs>

¹⁷⁶ NICCY's Advice to the Civil and Family Justice Review; <http://www.niccy.org/publications/2016/october/21/civil-and-family-justice-review/>

¹⁷⁷ Review Group's Report on Family Justice, Pg. 192-179, Sept 2017; <https://www.judiciary-ni.gov.uk/publications/review-groups-report-family-justice>

¹⁷⁸ UN Committee on the Right of the Child, Para. 67, Pg 16, 2008 Concluding Observations; <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersionsCRC.C.GBR.CO.4.pdf>

¹⁷⁹ #Pupil Voice: Making A Difference - A Youth Led Study into Pupil Participation in Northern Ireland;

<https://www.niccy.org/professionals-practitioners-policymakers/participation/pupils-voices-pupil-participation-in-schools/pupils-voice-making-a-difference-report/>

It is vital that those responsible for the development and implementation of strategies, policies and services affecting children and young people, directly and indirectly, are provided with the appropriate support and training required to include, and evidence, the voice of children and young people in any development. However, recent statutory developments including the Children's Services Co-operation Act; the Statutory Guidance to Community Planning and the (draft) Children and Young People's Strategic Plan (and associated Participation Project) have been positive in highlighting the benefits and importance of children and young people's participation. The challenge is to translate the legislative and strategic intentions into common practice, as part of the delivery of services for children and young people.

The recommendations from NICCY's 'Walking or Talking Participation?' Report, 2014,¹⁸⁰ which are still very much relevant,¹⁸¹ can be linked to developments within the current draft of the Children and Young People's Strategy. The report highlights the need for all government departments to develop effective systems and mechanisms for engaging children and young people, in order to fulfil their duties under the UNCRC and to ensure they are in a position to accurately report that they are meeting their obligations.

Particular attention should be paid to recording and analysing their views, evaluating the effectiveness of the process, and providing feedback to participants on the impacts that have been made as a result of their engagement. Promoting the participation of children and young people and their right to have a say in decisions affecting them, and for their views to be given due weight in accordance with their age and evolving capacity, is essential to fulfil our national and international obligations. There is a lack of consistency and connectedness in existing participation mechanisms in schools; in the youth sector; at community, local government and national levels. There is also an absence of evidence of the impact of engagement with children and young people in the development of legislation, policies, strategies, action plans and service delivery.

However, if an holistic and co-ordinated approach is taken, the outworking of the Children's Service's Co-operation Act, Community Planning Statutory Guidance, Priorities for Youth and the forthcoming Children's and Young People's Strategy could dramatically improve the participation of children and young people in decision making processes in Northern Ireland.

¹⁸⁰ 'Walking or Talking Participation - evidencing the impact of direct participation with children and young people in the development of departmental policies, strategies, legislation and services', Oct 2014; <https://www.niccy.org/publications/2014/october/20/walking-or-talking-participation/>

¹⁸¹ Recommendations 1-5 were accepted at the time by OFMDFM

Calls to Government

Government must therefore prioritise the participation of children and young people by establishing clear mechanisms in all processes. These must include:

1. Development of measurable outcomes to provide a 'progression framework' from local to national participation, including exemplar models of engagement and examples of good practice;
2. Establishing structures (including a NI Youth Assembly) for the meaningful participation of children and young people in the development of policies, strategies, legislation and service delivery and monitoring of same; and
3. Establishing benchmarked levels of children's and young people's participation.



7.9 CHALLENGING DISCRIMINATION

Article 2 of the UNCRC provides protections for all children from discrimination of any kind.

Article 2

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

In its most recent examination of the UK Government in 2016, the UN Committee on the Rights of the Child recommended that the Government,

*“Consider the possibility of expanding legislation to provide protection of all children under 18 years of age against discrimination on the grounds of their age.”*¹⁸²

The Committee also highlighted the need for the Government to strengthen its awareness-raising and other preventive activities against discrimination and stigmatization,¹⁸³ and recalled its previous recommendation that the State party take urgent measures to address the “intolerance of childhood” and general negative public attitude towards children, especially adolescents, within society, including in the media.¹⁸⁴

Challenging Discrimination: The Context

Access to Goods, Facilities and Services

In Northern Ireland, it is proposed to introduce legislation to protect against discrimination on grounds of age when accessing goods, facilities and services (Age GFS). It is also proposed to apply these protections only to those aged over 16. There is significant evidence that children and young people experience discrimination. NICCY has provided a wealth of compelling evidence to Government which clearly highlights the need to include children and young people of all ages within the scope of the Age GFS legislation.¹⁸⁵ NICCY does not believe that any of the comprehensive evidence it has provided has been taken into account in developing the current proposals regarding under 16s. Children and young people already enjoy protection from discrimination on the basis of their age in employment and vocational training¹⁸⁶ and on the grounds of sex, sexual orientation, religion and political opinion, race and disability when accessing goods, facilities and services in Northern Ireland.

► **Case Study:** NICCY represented an 18 year old young person who was registered as deaf before a Tribunal, where the young person alleged that they had been discriminated against on the grounds of their disability. The young person had not been able to complete their education in their school as they had not been supported in class appropriately, and felt very aggrieved at this. We advocated on their behalf at the pre-proceedings stage and then provided representation at the hearing. The young person was able to give their own evidence to the Tribunal which was an empowering experience. A finding of discrimination was made against the school on a number of grounds and the young person felt vindicated. In addition we secured an education package which allowed them to complete some examinations.

¹⁸² Para 22(a), CRC/C/GBR/CO/5

¹⁸³ Para 22(c), CRC/C/GBR/CO/5

¹⁸⁴ Para 23, CRC/C/GBR/CO/5

¹⁸⁵ <https://www.niccy.org/about-us/our-current-work/high-level-corporate-objectives/respecting-the-rights-of-vulnerable-groups-of-children/gfs-goods-facilities-and-services>

¹⁸⁶ As provided for by the Employment Equality (Age) Regulations (Northern Ireland) (2006). These protections apply to children from the age of 13 as this is the age at which children are legally allowed to work in Northern Ireland.

Mental Capacity

Throughout the development of the Mental Capacity Act (Northern Ireland) 2016, NICCY has consistently expressed concern regarding the proposed application of the Mental Capacity Act (Northern Ireland) 2016 only to those aged 16 and over, thus denying young people under 16 access to the protections and safeguards under the Act. The Act was introduced following extensive consultation and applies only to young people over the age of 16. The Department of Health, in the development of the Act, has been clear that the inclusion of 16 and 17 years olds in the Act would mean that the Act would apply to this age group in the same way as adults.

However, it is now clear that due to The Age of Majority Act 1969 where a 16 or 17 year old lacks the capacity to consent to an act which requires their consent, responsibility for the provision of consent will transfer to their parents. With the exception of deprivation of liberty, all other acts will require consent. Therefore, 16 and 17 year olds who come within the scope of the legislation due to their lack of capacity will be unable to access any of the protections and safeguards in the Act, unless all persons with parental responsibility for them fail or refuse to give their consent to an act. This is extremely unlikely to happen in many cases, meaning that the vast majority of 16 and 17 years olds will have no access to the protections and safeguards contained in the legislation. Given the difficulties that this presents for 16 or 17 year olds to have access to the safeguards and protections of the legislation, these young people are at a significant disadvantage to adults who automatically have access to the safeguards and protections of the Act when they lose capacity.

As well as this never having been the intention of Government in the consultation on the Act, there are serious concerns with regard to children in the care of the State and the Government's compliance with vital case law including *JT v UK*, which lead to the introduction of the nominated person procedure, to address the incompatibility of the nearest relative provisions with Article 8 of the ECHR, as incorporated by the Human Rights Act 1998.¹⁸⁷

With regard to the legal position for children and young people under 16, there has still been no consultation on a revised Mental Health (NI) Order 1986, or information in a revised Code of Practice for the future situation regarding children and young people aged under 16. This is of particular concern as the Bamford Review stated that the Mental Health (NI) Order 1986 is not fit for purpose and in places is not compliant with the European Convention on Human Rights as incorporated by the Human Rights Act 1998. Due to their inherent vulnerability, children require more, rather than less protection from discrimination than adults. However, they experience discrimination on a regular basis on grounds of their age.

¹⁸⁷ 26494/95 (2000) ECHR 133.

Equal Protection from all Forms of Assault

“The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.”¹⁸⁸

Article 19

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

2016 Concluding Observations

Corporal punishment

40. *With reference to its general comment No. 8 and its previous recommendations, the Committee urges the State party, in all devolved administrations, Overseas Territories and Crown Dependencies, to:*
- (a) Prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as “reasonable chastisement”;*
 - (b) Ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;*
 - (c) Strengthen its efforts to promote positive and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.*

The articles of the UNCRC are understood to be indivisible, interrelated and interdependent and this can be clearly seen when examining children and young people’s right to non-discrimination, particularly in the area of legal protection from all forms of violence and assault, including physical punishment.

While the law regarding physical punishment in Northern Ireland was reformed to restrict the defence of ‘reasonable chastisement’ or ‘reasonable punishment’ in the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, the defence is still available to parents in certain circumstances in regard to the offence of common assault.¹⁸⁹ In the Republic of Ireland the Children First Act (2015) included an amendment to the Non-Fatal Offences Against the Person Act (1997) which abolished the common law defence of reasonable chastisement¹⁹⁰ and currently the devolved administrations in Scotland and Wales are taking steps towards legal reform.¹⁹¹ While there has been no functioning Assembly or Executive since January 2017, the Commissioner has continued to raise the profile of Equal Protection in Northern Ireland, and to engage with a range of statutory and non-governmental organisations and political parties on the issue.

¹⁸⁸ UN Committee on the Rights of the Child (2006) General Comment 8, para 21

¹⁸⁹ Article 2 Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006.

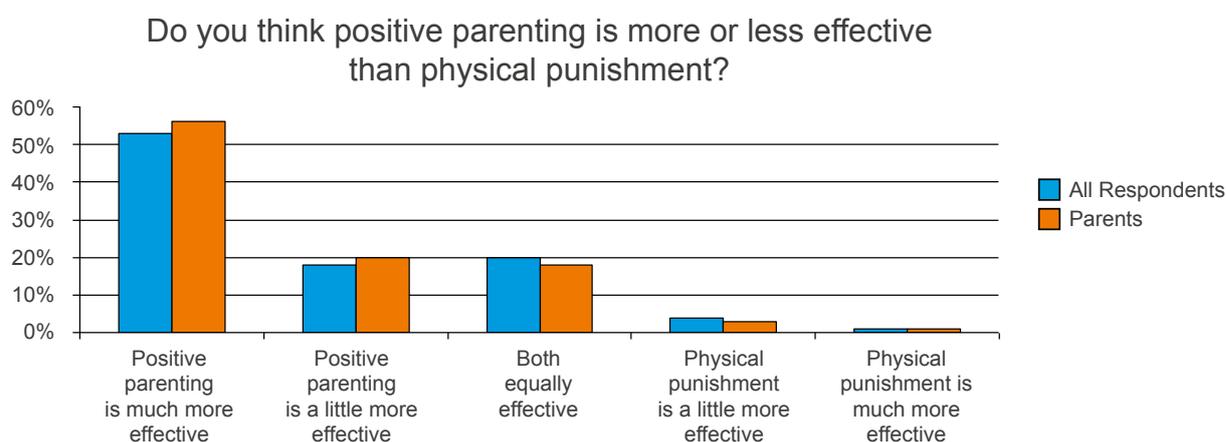
¹⁹⁰ This was provided for in Section 28 of the Act which came into effect on 11th December 2015.

¹⁹¹ The Scottish Government has stated it will support a Private Members Bill to be introduced by John Finnie MSP to remove the defence of ‘justifiable assault’ and the Welsh Government consultation on proposals to remove the defense of reasonable punishment closed on 2 April 2018.

Earlier research undertaken by NICCY in conjunction with NSPCC and Barnardo's¹⁹² provided the basis of an updated review published in Scotland in 2015, which documented that physical punishment: was not effective in achieving parenting goals; was detrimental to children's health and development; carried a serious risk of escalation into injurious abuse and maltreatment; and that its use declined more quickly in countries where it has been prohibited.¹⁹³ The international evidence base regarding the poor outcomes achieved for children who are subject to physical punishment (including increased childhood aggression, antisocial behaviour and mental health problems) has continued to grow.¹⁹⁴

In 2017 NICCY also published commissioned survey findings which explored adult attitudes toward physical punishment and reform of the law in Northern Ireland.¹⁹⁵ The research highlighted that the majority of adults (70% of adults and 76% of parents) viewed positive parenting as more effective than physical punishment (see Figure 3) and reported that physical punishment was less acceptable than other methods of discipline, such as withdrawing treats or pocket money, grounding or negotiation or discussion.

Figure 3



Base: All respondents n=1594; Parents n=899

The research also identified that there had been a significant decline in the number of parents being provided with information about positive parenting and alternatives to physical punishment since 2008. In relation to reforming the law, a majority of adults (63%) reported that they would support change to ensure children are given the same protection from all forms of assault, including hitting and smacking, that is currently afforded to adults (see Figure 4).

¹⁹² Bunting L., Webb M.A. and Healy J. (2008) The 'Smacking Debate' in Northern Ireland – Messages from Research, Belfast: NICCY.

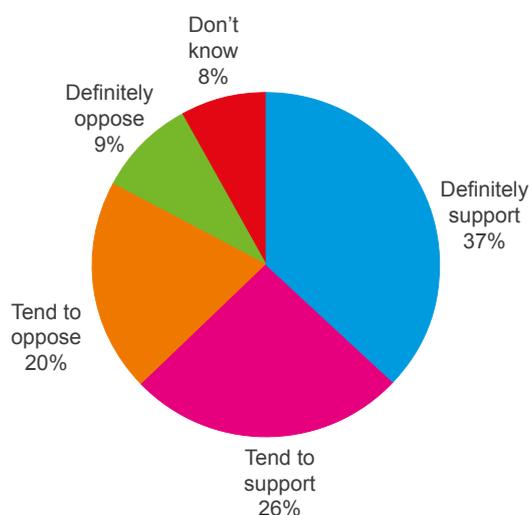
¹⁹³ Heilmann A., Kelly Y. and Watt R. (2015) Equally Protected? A Review of the Evidence on the Physical Punishment of Children, Children and Young People's Commissioner Scotland, Children 1st, Barnardo's and NSPCC. Available at: <https://www.nspcc.org.uk/services-and-resources/research-and-resources/2015/equally-protected/>

¹⁹⁴ See for example, Gershoff E.T. and Grogan-Kaylor A. (2016) Spanking and child outcomes: Old controversies and new meta-analyses, Journal Family of Psychology June 30(4):453-469.

¹⁹⁵ NICCY (2017) Changing Perceptions: Equal Protection for Children, NICCY's work and survey results on attitudes to physical punishment. Available at: <https://www.niccy.org/publications/2017/june/29/changing-perceptions-equal-protection-for-children/>

Figure 4

Would you support or oppose a change in the law to give children the same protection that adults have?



Base: All respondents n=1594

It is time for Government to reform the law to ensure children have Equal Protection from all forms of assault, including physical punishment and to renew its commitment to supporting families, including through dedicated and effective positive parenting support. Equal Protection must be directly addressed by the Family and Parenting Support Strategy, currently being developed by the Department of Health in conjunction with other Departments, as well as in broader strategies, such as, the Children and Young People's Strategy.

Calls to Government

Government must act to protect children and young people from discrimination through:

- 1 'Age GFS' legislation which covers all age groups to include the protection of children and young people from discrimination when accessing goods, facilities and services;**
- 2 Ensuring that children and young people have access to at least, equivalent safeguards under the mental health and mental capacity frameworks in Northern Ireland, and amending the Act to ensure it applies to 16 and 17 year olds in the same way as adults; and**
- 3 Legislative reform to ensure children have Equal Protection from all forms of assault, including physical punishment, and should renew its commitment to supporting families, including through dedicated and effective positive parenting support.**



8. SUMMARY OF NICCY CALLS TO GOVERNMENT

Educational Inequalities

Government must address educational inequalities through:

1. Ending the educational attainment gap between specific groups of children and young people;
2. Removing all barriers to every child's full participation in and access to a child rights compliant education system, including supporting LGBT, newcomer, LAC and children with SEN and addressing the costs of education to families;
3. Ensuring that the focus of education is on the development of every child's talents, skills and abilities, rather than purely academic achievement; promoting children's wellbeing and measuring same; and
4. Having an urgent debate and consultation on how we fund education in Northern Ireland, and whether the money required to ensure that all children have access to an effective education, can be found through streamlining the education system, and reducing duplication in spend due to the operation of a number of parallel, State funded education systems.

Mental Health

Government must prioritise children and young people's mental health through:

1. Demonstrating greater strategic planning and investment in children and young people's emotional well-being and mental health, in order to embed consistency in the availability and quality of services, from prevention and early intervention, to specialist services;
2. Mapping need and measuring outcomes by developing robust data and monitoring systems to better identify need and direct resources to best effect;
3. Tackling the root causes of poor mental health by applying a 'health in all policies' approach to policy making at all levels, and across all sectors; and
4. Delivering on CAMHS improvement plans that have identified areas where resources are required. This includes clarity on ring fenced investment to implement actions, including set timeframes, identification of lead partners and establishing robust and transparent oversight mechanisms.

Child Poverty

Government must take action to prioritise the eradication of child poverty through:

1. Meeting the material needs of children, through increasing family incomes, including by ensuring that there are sufficient, decently paid jobs for parents and young school leavers;
2. Allocating resources to mitigate against recent changes in social security benefits, including the Two-Child Limit, ensuring that the social security system is the safety net intended to prevent families falling into poverty; and
3. Developing and implementing a comprehensive action plan to eradicate child poverty, including introducing affordable childcare, tackling educational inequalities, social exclusion and homelessness.

Safeguarding

Government must ensure that all children are safe and protected from harm through:

1. In reviewing the arrangements for the Safeguarding Board and Children and Young People's Strategic Partnership, ensure that a strong, independent, multiagency child protection body is in place;
2. Commencing a statutory multiagency child death review process, in line with Section 3(5) of the Safeguarding Board Act (Northern Ireland) 2011; and
3. Publishing CSE Progress Reports and providing assurance that the Independent Inquiry recommendations have been fully implemented.

Children and families subject to immigration control

1. The UK and Northern Ireland Governments must ensure that the rights of all children, including those of destitute asylum seekers, are fully protected and they receive the support they need;
2. The Government must ensure that all separated children have access to an independent Guardian; and
3. Government should seek to support the transfer of separated children to Northern Ireland, in cases where this would meet their best interests.

Bullying

1. Bullying remains a significant issue for many children and young people in Northern Ireland. All children should be protected from violence and harm, including when using technology, social media and the internet. Efforts to tackle bullying and violence in schools should be intensified and prioritised;
2. The 'Addressing Bullying in Schools Act (Northern Ireland) 2016' must be commenced. The Education Authority and schools should ensure the consistent and robust implementation and monitoring of anti-bullying policies, and compliance with the Act; and
3. Work on the urgent implementation of the draft e-Safety Strategy and Action Plan for children and young people in Northern Ireland must be taken forward without delay. A comprehensive overarching policy on cyberbullying should also be progressed as a matter of priority in order to keep children safe from harm.

Youth Justice

Government must ensure that Northern Ireland's Youth Justice System is child right's compliant, as was intended by the Youth Justice Review, and must implement all the recommendations of the Review and must specifically:

1. Department of Justice must ensure it monitors how it is fulfilling its statutory obligations to ensure adherence to the best interests of children involved with the Youth Justice System. Data must include:
 - a. Custody as a last resort and for the least possible time;
 - b. Section 75 monitoring of young people;
 - c. Levels of collaboration and co-operation with other children's services;
 - d. Improvement in levels of delay; and
 - e. Participation of children and young people in design and delivery.
2. Publish proposals to raise the minimum age of criminal responsibility to 14 years immediately;
3. The PSNI must demonstrate the purpose and outcomes of all Stop and Search operations involving children and young people, and must also improve the quality of engagement with young people; and
4. The Youth Justice System must publish annual performance data, demonstrating tangible outcomes for children and young people involved with all their services. This data must be based on indicators proven to contribute to the reduction of offending by children and young people.

UK Withdrawal from the EU ('Brexit')

Government must ensure no adverse impacts on children's and young people's rights, and access to services as a result of UK's withdrawal from the EU ('Brexit') through the following:

1. All aspects of the Good Friday Agreement must be protected, including the right of people in Northern Ireland to identify as British, Irish or both. Moreover, the commitment to safeguarding human rights and the principle of equivalency of rights across the island of Ireland must be ensured;
2. The UK Government, Irish Government and European Union must work together to avoid physical infrastructure being located at or around the UK-EU border on the island of Ireland;
3. Safeguarding our children and young people must be ensured through maintaining current or similar security, policing and justice mechanisms e.g. Europol, Eurojust, ECRIS, European Arrest Warrant and Data protocols;
4. The UK and Irish Governments must co-operate to ensure the freedom of movement of people across the border is not impeded, so that children, young people and their families continue to access services and facilities on either side of the border e.g. in relation to health, education, family life, sports, cultural and leisure activities; and
5. The UK Government (post-Brexit) should commit to the continuation of financial support currently provided to Northern Ireland by the EU, including through agricultural subsidies, structural funds and grants which contribute significantly to the Northern Ireland economy, alleviate child poverty and promote adequate standards of living - with a particular focus on disadvantaged/marginalised groups and communities.

Legacy of the Conflict

Government must urgently address the impact of the legacy of the conflict on children and young people through:

1. Ensuring the full and effective protection of children and young people from trauma, violence or mistreatment in their communities, including from all forms of violence by non-State forces as well as from recruitment by such forces;
2. Addressing the continuing impacts of the conflict, including mental ill health, family breakdown, child poverty and educational under attainment, and the provision of adequate support services to children and young people in their communities;
3. Supporting children and young people to play a central role in building a peaceful future in Northern Ireland, recognising that over many years, children have acted as human rights defenders; and
4. Information about the conflict should be provided to children and young people with a view to achieving a shared narrative about the conflict.

Participation

Government must prioritise the participation of children and young people through:

1. Establishing a Northern Ireland Children's and Young Peoples' Participation Strategy, with measurable outcomes to provide a 'progression framework' from local to national participation, including exemplar models of engagement and examples of good practice;
2. Establishing structures for the meaningful participation of children and young people – giving due weight to their views - in the development of policies, strategies, legislation and service delivery and monitoring of same; and
3. Establishing benchmarked levels of children's and young people's participation.

Challenging Discrimination

Government must act to protect children and young people from discrimination through:

- ▶ ‘Age GFS’ legislation which covers all age groups, to include the protection of children and young people from discrimination when accessing goods, facilities and services;
- ▶ Ensuring that children and young people have access to at least, equivalent safeguards under the mental health and mental capacity frameworks in Northern Ireland, and amending the Act to ensure it applies to 16 and 17 year olds in the same way as adults; and
- ▶ Legislative reform to ensure children have Equal Protection from all forms of assault, including physical punishment, and should renew its commitment to supporting families, including through dedicated and effective positive parenting support.



9. ACKNOWLEDGEMENTS

NICCY would like to acknowledge the support of the Department of Education in collating progress updates against the UN Committee’s Concluding Observations, as published in 2016, following the fifth Periodic Examination of the UK State Party, whilst also acknowledging the absence of the Northern Ireland Executive. We would also like to thank all Government Departments for their input to this NICCY monitoring table.



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