



# **ANNUAL COMPLAINTS AND LEGAL REPORT 2020-2021**

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# COMMISSIONER'S FOREWORD



*"We **worry** about what a **child** will be tomorrow, yet we **forget** that he is **someone** today".*

- Stacia Tauscher

The oft quoted truism that children are "our future" can result in missing the here and now. Of course, how they experience services and the world around them influences the sort of adult they will become but that is not the purpose of childhood and indeed children's rights. We have to protect our children today. Hence the importance of casework that seeks to address violations of children's rights on an individual basis.

What a year it has been for all of us. Like many, NICCY's Legal and Investigations services transferred from being office based to working from home and online in a matter of hours. It is quite remarkable how seamless that transition was as it was important to us that they continued to be available to young people, parents and carers as well as professionals. You will see from reading this report that whilst there has been a slight drop in the number of cases, the complexity has increased as parents and service providers have tried to navigate the new way of meeting children's right to education, health care, family life, protection and an adequate standard of living.

Schools were closed for a significant proportion of the year and education remained our largest area and again SEN the largest area within that. However, a number of new issues arose and the NICCY team helped parents navigate their way through. It would be remiss not to mention the impact that uncertainty concerning GCSEs and A' levels and of course the transfer process had on children, young people and parents, and this was reflected in our enquiries. There are lessons to be learned by government about how they took account of the views of children, young people and their families. NICCY were able to take the experience of individuals through our casework and advocate on a Northern Ireland-wide level.

It is of regret that where decisions were made they were made too late and in some cases fell short of what was needed.

Similarly in the area of health and social care we supported children and families struggling with the impact of modifications to services and regulations in response to coronavirus.

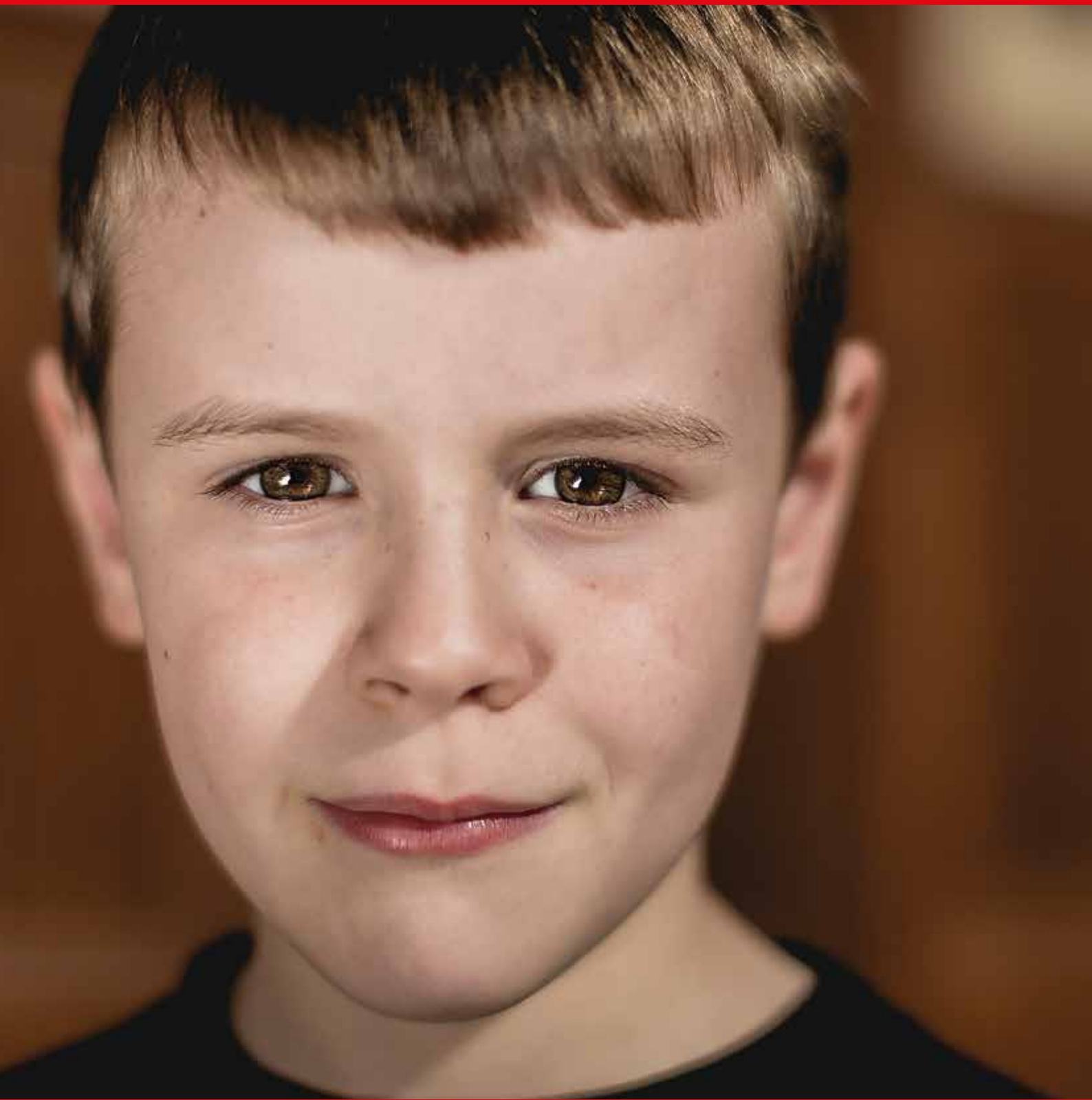
I do not under-estimate the challenge faced by the Northern Ireland government in responding to the public health emergency, but I hope that this report helps identify the impact that some decisions had on the most vulnerable and excluded young people, and as I have said above, learn the lessons from this.

This report also outlines that as well as working with nearly 300 individual cases, NICCY's Legal and Investigations Team also worked on Judicial Review and Tribunal interventions, as well as Public Interest Disclosures.

Another highlight of the report is the progress that has been made on the formal investigation as it enters the final stages – the sheer volume of work that this has entailed has been incredible.

The comments from parents and carers confirm what we know, that our Legal and Investigations Team are professional and dedicated. They maintained a high quality and responsive service during a difficult time, and I am grateful for all their hard work.

**Koulla Yiasouma**  
**Northern Ireland Commissioner**  
**for Children and Young People**



## INTRODUCTION

Welcome to our Annual Complaints and Legal Report for the 2020-2021 business year. The advent of COVID-19 shortly before its beginning, saw the first restrictions put in place by the Northern Ireland Executive. It was inevitable that it, and the problems it created for all of society, would come to dominate our work over the following year (and indeed beyond). The issues the pandemic gave rise to, were unprecedented and complex. The Organisation like others, had to make the transition to working from home and address these while also addressing the practical considerations presented by such a move.

Disruption caused by COVID-19 including as a result of Government's measures under the Coronavirus Act 2020 was wide ranging. Families, children and young people had vastly reduced access to services across all aspects of their lives, vital services were suspended, health appointments were cancelled or postponed, children and young people were not able to attend school for the majority of the year, education, play, recreation and outdoor activities were severely restricted. The NHS and frontline services understandably focused on public health measures. It was very timely therefore that we increased our legal staff complement by a further 2 Solicitors in the past year.

The purpose of this report is to provide detail of the Complaints Casework Service and overview of our legal work. It is important to note that issues and/or trends identified through our legal work 'inform' our policy and research work and contributes to NICCY's advice provided to Government and relevant authorities.

The Northern Ireland Commissioner for Children and Young People (NICCY) was established in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order 2003' ('the Order') 'to safeguard and promote the rights and best interests of children and young people

in Northern Ireland' (Article 6). In carrying out the functions of the Office, paramount consideration must be given to the rights of the child or young person. In so doing, NICCY shall have regard in particular, to the ascertainable wishes and feelings of the child or young person (considered in light of age and understanding) and to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). NICCY shall also have regard to the importance of the role of parents in the upbringing and development of their children.

Furthermore, under the founding legislation, the Commissioner has a statutory duty to keep under review the adequacy and effectiveness of law, practice and services provided by relevant authorities.

### **Mission**

NICCY's Mission is, 'to safeguard and promote the rights and best interests of children and young people'.

### **Vision**

NICCY's Vision is, 'A society where the rights of all Children and Young People are respected and realised.

### **Our Values**

All of NICCY's work is underpinned by our core values which we recently reviewed and updated. We apply these in our day to day work and seek outcomes based on their application and realisation.

1. **Children's and Young People's Rights** are at the centre of all we do.
2. We value and protect our **independence**.
3. We **respect** and value people, promote inclusion and diversity, and challenge discrimination and inequality.
4. We are open and honest and act with **integrity**.
5. We are **optimistic**, striving to effect positive and lasting change.

## The Legal and Investigations Team

The Legal and Investigations (L&I) Department is headed up by our Chief Executive, Mairéad McCafferty PQH LL.M. During 2020-2021 the L&I Team comprised Mairéad and:

- ▶ Peter McGettrick BCL, Senior Legal & Investigations Officer (Nov' 2020);
- ▶ Fiona Hunter LLB, Senior Legal & Investigations Officer;
- ▶ Robert Hunter MLegSci, Legal & Investigations Officer
- ▶ Shari Holmes LLB, Legal & Investigations Officer (Nov' 2020);
- ▶ Deborah Crawford LL.M, Legal & Investigations Advice Officer; and
- ▶ Steven Chapman, Administration Officer.



## **NICCY'S STATUTORY DUTIES & POWERS**

NICCY's duties and powers, as set out in legislation are summarised below and in the following diagram:

Article 7 of the 2003 Order outlines the **duties** of the Commissioner which are:

- ▶ To promote an understanding of the rights of children and young persons;
- ▶ To promote an awareness of the importance of those rights and a respect among children and young persons for the rights of others;
- ▶ To promote an awareness of matters relating to the best interests of children and young persons;
- ▶ To keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons;
- ▶ To keep under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities;
- ▶ To advise government and relevant authorities on matters concerning the rights or best interests of children and young persons;
- ▶ To take reasonable steps to ensure that children and young persons and their carers are made aware of the functions of the Commissioner, the location of her office and the ways in which they may communicate with the Commissioner;
- ▶ To take reasonable steps to ensure that children and young persons are encouraged to communicate with the Commissioner;
- ▶ To take reasonable steps to ensure that the content of any matter published by the Commissioner takes account, so far as practicable, of the age, understanding and usual language of any children or young person by whom it is intended that such matter will be read and of the effect of any disabilities they may have;

- ▶ To take reasonable steps to ensure that the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of her functions; and
- ▶ To take reasonable steps to ensure that the services of the Commissioner are, so far as practicable, made available to children and young persons in the locality in which they live.

Articles 8-15 outline the Commissioner's general **powers** which are to:

- ▶ Undertake, commission or provide financial or other assistance for, research or educational activities concerning the rights or best interests of children and young persons or the exercise of her functions;
- ▶ After consultation with such bodies as she thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children or young persons;
- ▶ For the purpose of any of her functions, conduct such investigations as she considers necessary or expedient;
- ▶ Compile information, provide advice and publish any matter concerning the rights and best interests of children and young persons, including the outcome of any research or investigation and any advice provided by the Commissioner;
- ▶ Make representations or recommendations to any body or person about any matter concerning the rights and best interests of children and young persons;
- ▶ Conduct general reviews of advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities;
- ▶ Review advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities in individual cases;
- ▶ Provide assistance with complaints to relevant authorities;
- ▶ Conduct investigations of complaints against relevant authorities; and/or
- ▶ Bring, intervene in or assist in legal proceedings.



## 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

Art 7(1) (a) 2003 Order

### Monitor & Review

The effectiveness of law and practice

The adequacy and effectiveness of services

Art 7(2) &(3) 2003 Order

### Advise & Communicate

Advise government and relevant authorities;

Communicate effectively with children and young persons and their parents

Seek views of Children & Young People

Art 7(4) &(5) 2003 Order

## 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

Art 8(1) & (3) & (5)

### 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

Art 8 (5) & (6)

### Address Rights Breaches Advocacy

Assist with complaints to / against relevant authorities

Bring, intervene in, or assist in legal proceedings

Art 11, 12 & 14



## LEGAL WORK CATEGORIES

As set out in the previous section, the 2003 Order confers a range of powers upon the Commissioner. These powers are the ‘tools’ which enable the Commissioner to fulfil her duties. In line with the legal functions of the Office, the following is from our Corporate Plan - revised for 2021-23 business years, to reflect the impact of the Covid-19 pandemic and as a result of this, the volume and nature of complaints as well as changes to NICCY’s key priorities – it sets out how NICCY uses these powers to address breaches of Children’s and Young People’s Rights in Northern Ireland i.e.:

- ▶ **Complaints Handling** (casework) against relevant authorities, across a range of areas; e.g. special educational needs and disabilities including SENDIST Tribunals; the impact of Covid-19 e.g. temporary modifications and arrangements across health, education and secure settings; lockdown restrictions; access to healthcare, waiting times for surgery, educational arrangements, remote learning, access to digital devices and/or Wi-Fi, the transfer test and assessment arrangements;
- ▶ **Conducting Independent Investigations** where breaches of the rights of children and young people are alleged, and where internal complaints processes have been exhausted;
- ▶ **Formal Investigations** into cases / complaints which require formal use of NICCY’s powers including those which expose systemic failings adversely impacting on Children’s Rights. We are currently progressing our first formal investigation, the report on which will be published in the next business year;
- ▶ **Bringing, Intervening in, or Assisting with, Legal Proceedings** in addressing breaches of children’s and young people’s rights through a range of measures; some enquiries we receive will require us to commence or intervene in legal proceedings or assist with legal funding. These sit ‘outside’ complaints casework and are dealt with using established criteria;
- ▶ **Holding Government to Account** when they fail to protect children’s rights. This involves work with our Policy & Research Colleagues;
- ▶ **Providing Advice** to ensure the implementation of children’s rights in compliance with current legislation, strategies and policies; and
- ▶ **Processing Protected Disclosures** in line with the ‘Public Interest Disclosure (Prescribed Persons) Order 2014; (Public Interest Disclosure (Northern Ireland) Order 1998 as subsequently amended). These are reported on annually as required.

Further details and criteria on each are available on our website or via our Legal and Investigations Staff.



## **COMPLAINTS CASEWORK SERVICE**

In the 2020/21 business year our Complaints Casework Service Staff:

- ▶ dealt with 246 new cases;
- ▶ carried forward 85 cases ongoing from the previous business year; and
- ▶ successfully closed 277 cases.

Working from home did not prevent the Team's ability to maintain delivery on our legal and investigation work including complaints casework services. We had many Covid-19 related complaints, worked with Parents, Carers and Professionals who contacted us and liaised with relevant authorities - many of whom experienced uncertainty as to how they were going to function in the initial weeks and months of the pandemic.

While the total number of Complaints received this year was lower than the previous year, the workload increased due to the complex nature and urgency of the matters faced by children, young people, parents, carers and professionals. The range of complaints were as stated earlier, wide ranging; from the practicalities faced by families trying to access health treatment for their children, in education where they did not have a computer for their children to access online learning, to parents not being able to physically visit their children held in secure or hospital facilities. NICCY received many complaints at this time from education professionals, social workers and other professional services who sought advice and assistance with interpreting government legislation and guidance, and the practical outworkings of these.

Following receipt of a complaint via our referral form, (*see back cover for website details*) the case is registered and allocated to a caseworker. We ensure equality of access to our services and can arrange an interpreter or complete the form over the telephone.

We can meet clients at e.g. a community centre if required. When a client contacts us, our policy is to contact clients within 5 days of the case being allocated at our weekly 'Complaints Allocation and Review' (CAR) meetings.

Children and young people are not required to complete the online form and are always given priority access to the team on the same day that they contact us.

If a matter is outside our remit, the client is informed and signposted appropriately.

Cases are closed when they are resolved satisfactorily and clients are informed. If a client disengages from our service, usually due to the matter having been resolved, we will always write to them advising that we assume they no longer require assistance and are closing the case. However, clients are informed that they are free to contact us if they do require further assistance and the case will be re-opened.

In the statistics below we have outlined the categories of complaints we have received during 2020-21. Complaints are categorised according to the primary matter about which the client is contacting us while recognising there may be other additional issues to also be addressed.

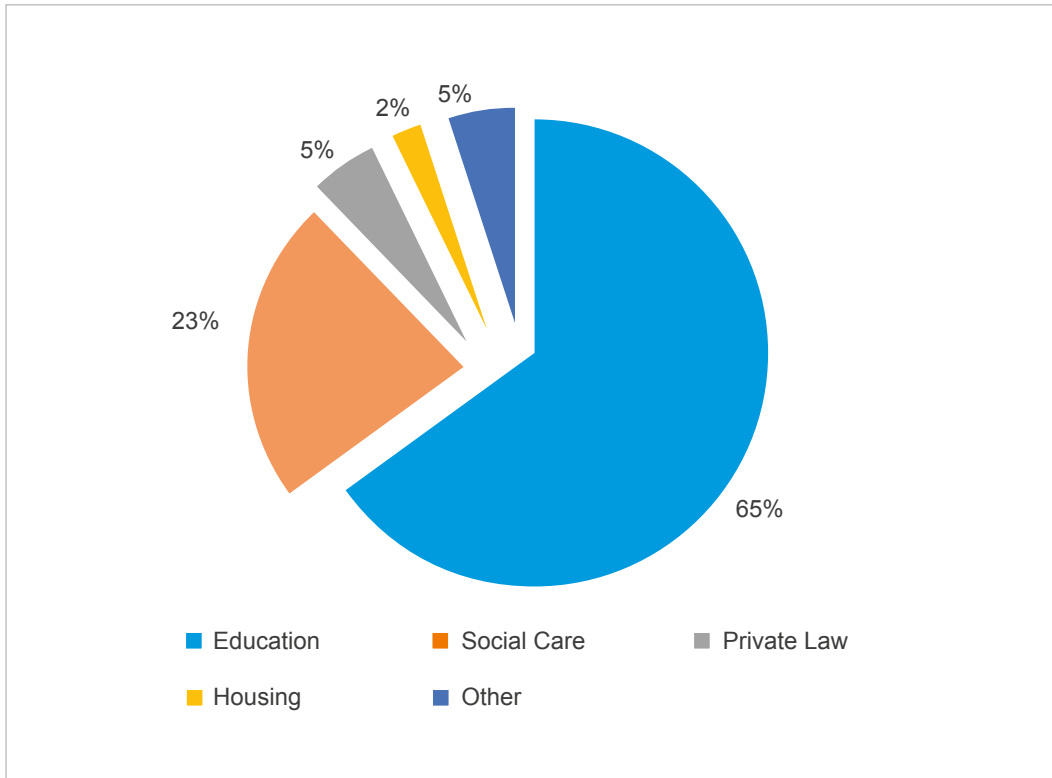
We have created several new categories to record the changing nature of complaints arising due to Covid-19 as necessary. This also facilitates feedback in relation to trends and issues including those our NICCY Colleagues are to be made aware of to inform their work.



# **STATISTICAL OVERVIEW 2020-2021 BUSINESS YEAR**

## Chart 1

### 2020-21 Types of Enquiry



In the 2020/21 business year, we dealt with 246 new enquiries and closed 277. As the Covid-19 restrictions inevitably impacted upon the nature of our complaints, we received fewer queries. In education these were 65% this year compared to 75% last year. The education queries are broken down in the following pie chart 2.

There was a rise in social care enquiries i.e. from 13% to 23%. The health and social care complaints mainly arose from the temporary reduction of services for vulnerable children. Mental health services were reduced for some time though were restored via online or telephone sessions. NICCY had advocated for children and young people in these situations - contacting statutory service providers to clarify different ways of providing access to these.

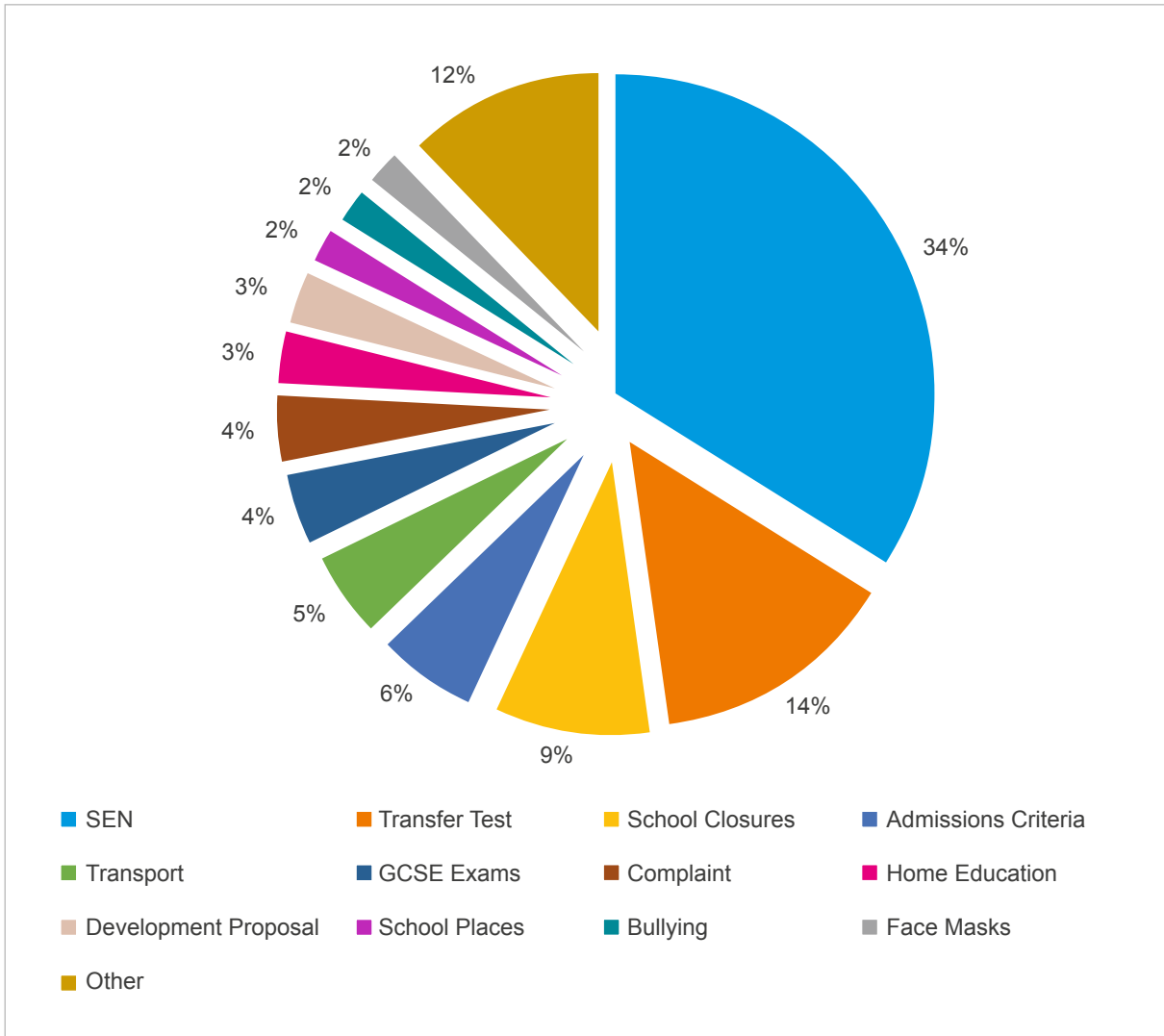
Due to restrictions in our legislation, we are prohibited from acting in matters of family or private law. When compared to last year, these complaints reduced from 7% to 5%.

We occasionally received complaints about the actions of the Police Service of Northern Ireland, which again, are outside remit and these cases are referred to the Police Ombudsman – the statutory body set up to deal with such complaints.



## Chart 2

### Education Enquiries



#### Range of Education related enquiries

The pie chart above shows the range of issues that we assist with in Education. Special Educational Needs (SEN) has again been the largest category of complaints encompassing 34% of education related queries this year. Some of the new categories added i.e. Transfer Test, Facemasks, GCSE Exams and A, AS level assessments were of huge concern to complainants; we collated relevant information and advised parents following liaison with relevant authorities on new guidance as issued. This was difficult at times due to the ever-changing restrictions and unprecedented nature of the pandemic.

#### Special Educational Needs

SEN concerns remained high for parents and the nature of complaints received changed as some struggled to provide home education to children with specific and complex needs. We liaised with Special Schools in a number of cases to ensure their right to education was met and provided support for parents and children. We carried on SEN complaints work as there continued to be delays in diagnosis and assessment, all exacerbated by the pandemic and restrictions put in place to tackle the virus.

Assistance involved advocacy, liaising with relevant authorities, providing advice and guidance, developing case statements and submitting appeals to the Special Educational Needs and Disability Tribunal (SENDIST) as well as providing representation at the Tribunal hearing itself. As the pandemic and restrictions continued the SENDIST appeals were heard online; we provided representation at these as we have previously.

### **The Transfer Test**

NICCY called for the Transfer Test to be cancelled early in the pandemic, it was originally postponed from November 2020 to January 2021 and then eventually cancelled, with one provider only doing so at the very last minute. The whole drawn out situation inevitably caused a huge amount of uncertainty, stress and concern in the education sector, for parents and most importantly for children. We were contacted by many parents and practitioners who sought guidance around this and when the decision was finally made to cancel the tests, many unhappy parents contacted us to voice their strong views on the process and the impacts it was having on their child and their entire family.

### **Admissions Criteria**

As the Transfer Test did not proceed, this other new category arose. The Department of Education issued guidance to all Schools' Boards of Governors on what criteria to apply. Unfortunately, this guidance is not compulsory, and it resulted in Schools having different criteria, some of which were regarded as unfair. The legal team advised parents on the process in challenging unfair criteria, provided them with the latest information and we also intervened in 2 Judicial Review cases taken against 2 Schools over their criteria and application of same.

### **School Closures**

School closures were another new category this year. Parents and young people were understandably concerned that, not only had education provision been adversely affected due to the pandemic, but in some instances, they now also had to move to a new and unfamiliar school as their old school was being closed down for good. The Commissioner contacted the Department of Education with her concerns and asked for, and received, assurances that the rights of children affected would be paramount in transition.

### **GCSE, A & AS Level Exams/Assessments**

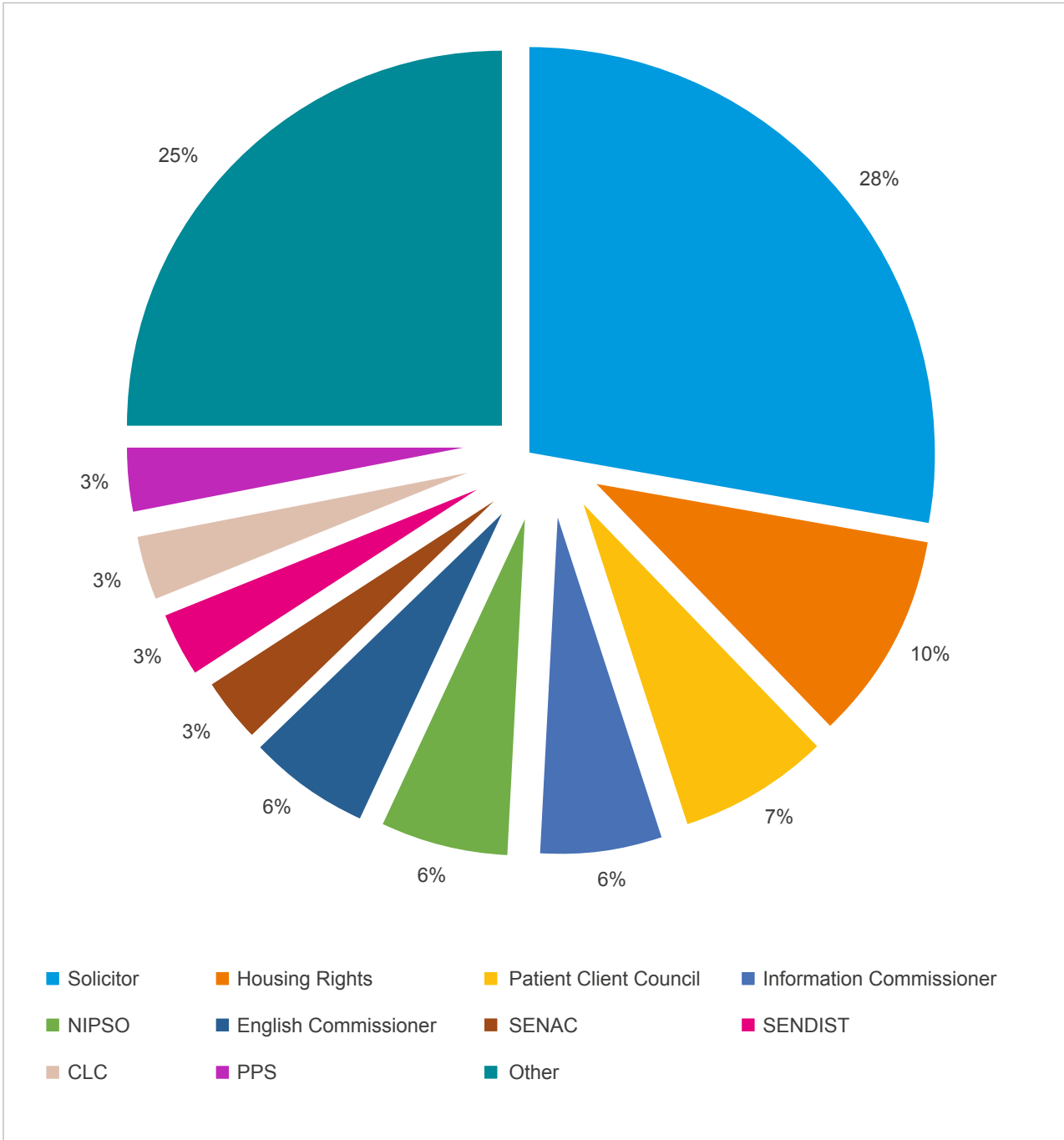
This is the category which prompted most complaints directly from young people themselves. It caused a huge amount of stress among those due to sit exams and led to further issues for them regarding further and higher education entry. The mental health of the young people was an obvious concern and the Commissioner was very outspoken on the topic. NICCY engaged with the relevant Minister to call for urgent action to cancel the exams and lessen the adverse impact created by the ongoing situation on children. The legal team advised a number of clients on changes in what was a fast moving and fluid situation and resolved issues of concern.

### **Home Education**

As a result of the ambiguity and uncertainty around school closures, educational provision, access to digital devices, the transfer test and other matters, Parents contacted us about home education as an alternative to school. We were able to provide legal advice on this and identified the relevant authorities and appropriate agencies with whom they needed to liaise.

## Chart 3

### Signposting



We continue to signpost to relevant external agencies as/when appropriate (see above chart). We will for example signpost to private solicitors - though we cannot recommend specific solicitors – if/when we receive queries from parents who are involved in family law related proceedings. NICCY’s legislative

remit is such that we are required to signpost clients as/when appropriate. On occasion, we have signposted for example, to the Patient Client Council, who can assist with complaints against Health and Social Care Trusts or have referred clients with queries about social security matters to Advice NI.



## COMPLAINTS CASEWORK: SAMPLE CASES

The following gives an indication of the types of complaints our L&I department has received in the past year. As always we seek to ensure 'resolution before litigation' i.e. successfully addressing the matter avoiding the need for recourse to legal / court action as this is invariably in the best interests of the children and young people involved.

### **Special Educational Needs Assessment Appeal (SEN)**

Sarah had difficulty with social interaction, cognition, and learning. This was hindering her educational experience and attainment. Statutory agencies had assessed her needs and concluded that no specific help was needed. NICCY worked on the appeal against this and as a result, a Statement of Special Educational Needs was issued which included a Classroom Assistant dedicated specifically to Sarah.

### **Special Educational Needs Assessment Refusal (SEN) 2**

Gareth presented with considerable learning needs and the relevant authorities refused an application to assess these. NICCY supported the family to appeal that decision and a statutory assessment was then carried out however, the result was too vague in respect of the offer of educational help and support. NICCY provided further assistance and the specific details of the support to be provided were clarified; a Classroom Assistant was assigned to work directly with Gareth.

### **Lack of digital devices**

Joanne was a ten-year-old child living with five other near relatives. The head of the household was a lone parent who worked in full-time employment though the level of family income meant Joanne was entitled to free school meals. The household did not have digital or other resources necessary to support Joanne's 'remote' online education. The only digital device which Joanne had ready access to for the purpose of her schoolwork was a mobile phone. The effect of this upon her educational experience and prospects was such that the family resorted to legal action against statutory authorities in respect of the transfer test. This was a matter NICCY highlighted to expose stark inequalities in education related to poverty and how Covid-19 exacerbated such in these circumstances.

### **Waiting list delays**

James is six years old and presents with signs of Autism Spectrum Disorder ("ASD"). This manifests in confrontational behaviours and difficulties with self-care and personal hygiene. His parents asked their Health and Social Care Trust for an ASD assessment but due to Covid-19, an already long waiting list (which had been sixteen months up to then) has now reached nineteen months. The delay in James being assessed has in turn, delayed implementation of therapeutic strategies and exacerbated existing physical and mental health difficulties within others in the household. This delay in ASD assessment, diagnosis and appropriate interventions may also have impacts upon addressing James' special educational needs. NICCY continues to support the family in taking this forward.

### **Visitation during Covid-19 lockdown restrictions**

Maria was a sixteen-year-old being treated as an inpatient in an NHS Psychiatric Unit. At the beginning of “lockdown” restrictions the Unit advised that direct visits from her immediate family could no longer take place. After review of applicable Coronavirus Act -19 related regulations and practice applied in other medical settings, NICCY’s Chief Executive made representation to the Psychiatric Unit noting that their policy made less allowance for visits than comparable settings. The visitation policy at the Unit was changed to allow direct contact for Maria with her immediate family.

### **Lack of personal protective equipment (PPE)**

Shauna had a medical condition that required physically close engagement during the day. Staff at her Special School said that due to Covid-19 including because of a lack of PPE, they could not perform the necessary related tasks. The Parent who contacted NICCY in this matter believed that a settled policy had been applicable in England for a considerable time. As a result of our investigation into the complaint, the Education Authority addressed this and gave attention to the issue with a view to confirming a policy.

### **Access / Provision of Mental Health Services**

John, a young boy was receiving weekly counselling and ‘weigh-in’ sessions in relation to his eating disorder and associated anxiety symptoms. These were then halted due to the lockdown restrictions at the beginning of the Covid-19 pandemic with no alternative arrangements for provision put in place.

We were contacted by the parents who were concerned at how quickly their child deteriorated as a result of the lack of support service.

We wrote to the Trust with the parents’ concerns and as a result an interim telephone counselling service was put in place quickly thereafter.

The parents contacted us again as the counselling sessions were not taking place weekly, but every ten days or more. We reverted to the Trust again to ensure consistency in provision for this vulnerable young person who benefited from regular sessions. His parents acknowledged the positive involvement of NICCY and expressed their gratitude for this.

## SEN and School trip

The mother of Tommy, a nine year old boy with SEN, contacted our L&I Team as the School had told his mother her son would not be permitted to attend a school trip to England because the Board of Governors determined that according to their risk assessment, he was too high a risk. The child had previously gone on a local overnight trip with the school without any issues; the school had previously stated that if the local trip went well, the child would be allowed to go on the England trip. The Board of Governors disregarded the successful experience of the previous trip. NICCY's involvement in relation to the relevant legislation meant we were able to support the mother with advice and challenged the decision. The school then allowed Tommy to go on the trip.



# EVALUATION REPORT 2020-2021

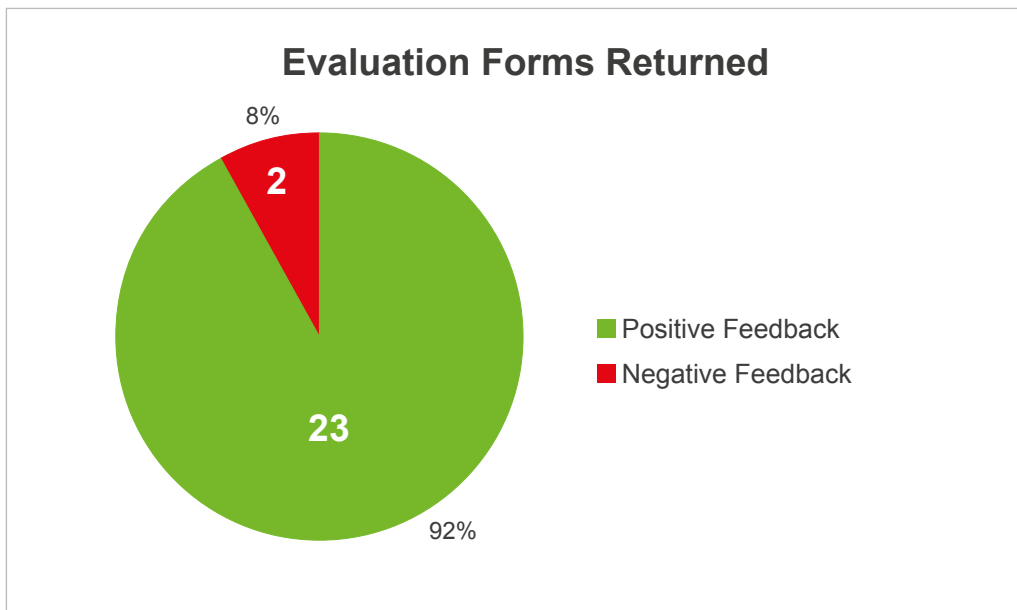


The L&I team strive to improve services and we welcome any feedback, positive or negative. When we close an enquiry each client is sent an evaluation form. These are mostly sent by email with a link for the client to complete the form and submit it confidentially. On occasion we have to send a paper copy, for example, if the client does not have access to an internet connection or email address.

Since moving to an email based evaluation system we have increased the completion rate year on year. This year has been exceptional given the impact of Covid-19 where the type of enquiries received changed and as a result, feedback rates decreased. We received 25 returns in 2020/21.

Evaluation is gathered anonymously to allow the clients to be open and honest in their assessment of our service.

Of the 25 evaluation forms returned in 2020/21, 23 contained positive feedback and 2 contained negative feedback.



Below is a selection of comments that clients made on the returned forms:

*“Informative and supportive.”*

*“I do appreciate both your follow up and thoughtfulness.”*

*“Thank you so much for all your help having eyes on the case has helped ensured the right decisions are being made I really appreciate everything you have done the boys are completely unaware of the true hero’s that are fighting their corner from myself and the boys a true. Thank you.”*

*“I felt more reassured and informed challenging school for what I believe was an unfair suspension.”*

*“We wouldn’t be where we are now if it wasn’t for your help - I am so grateful, thank you so so much! - I wish there was something we could do for you, you have been absolutely amazing.”*

Staff were also singled out for individual praise e.g.:

*“I would like to say huge thank you to Robert Hunter, not only on behalf of myself but our whole family, with Robert’s help we managed to secure a full time classroom assistant without his help I imagine it would have been an entirely different outcome...”*

*“Shari Holmes was very helpful and understanding. Shari took time to listen and provided appropriate support and guidance to me. Both Shari and Steven Chapman responded to my queries promptly this was greatly appreciated.”*

*“The help we received from Deborah was exceptional all went above and beyond without the help received we wouldn’t be in position we are today, We will be forever grateful for your help”.*

Feedback of any kind is always welcome, but it is gratifying to receive such praise for the hard work of the department. The positive comments reflect the experience of the vast majority of our clients having engaged with our service.

The two negative forms were due to restrictions placed upon us by our remit.

In cases, where we can identify a client who has submitted negative feedback, we contact them to clarify our role and remit, why we did what we did and to answer any remaining questions they have. Most people we are unable to assist accept this.

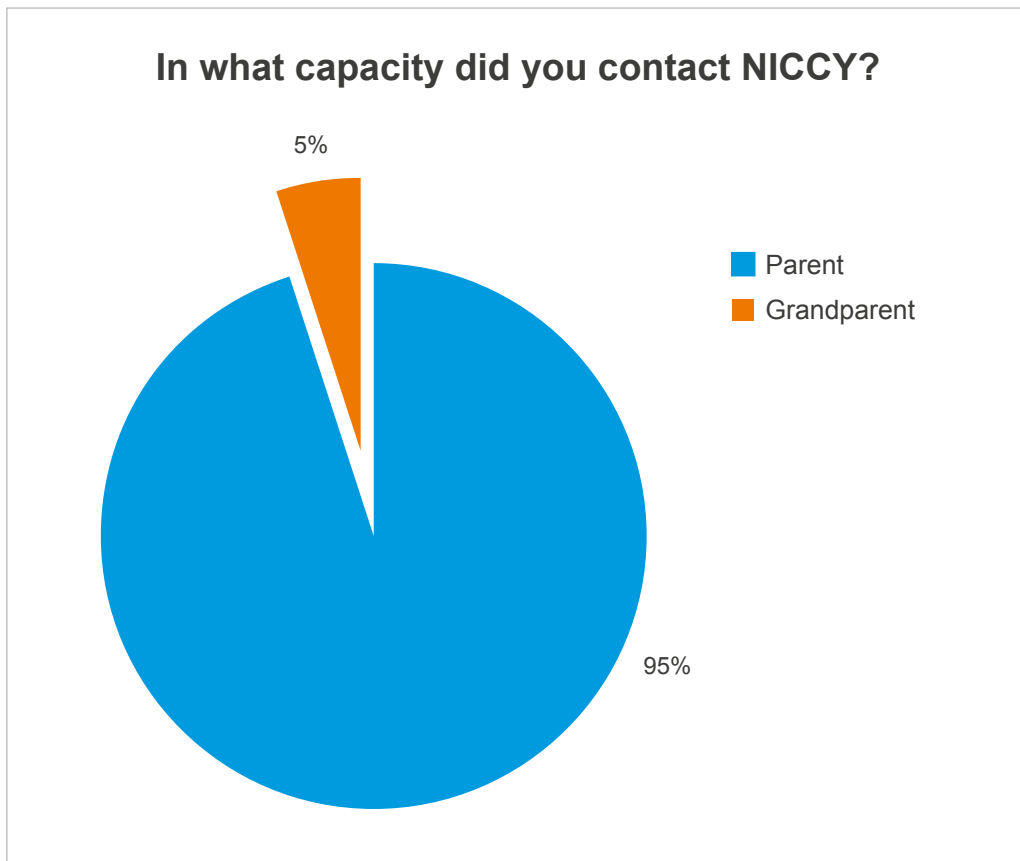
The first negative form contained no information explaining why they were unhappy with our service.

The second negative form was submitted by a parent unhappy with pandemic related school closures. NICCY was limited in what we could do in this case however, did provide information and support.

## Evaluation Questions

Turning to the questions asked on the evaluation form, this allows us to glean useful information and data to inform our practice, service user demographics and make improvements in service delivery.

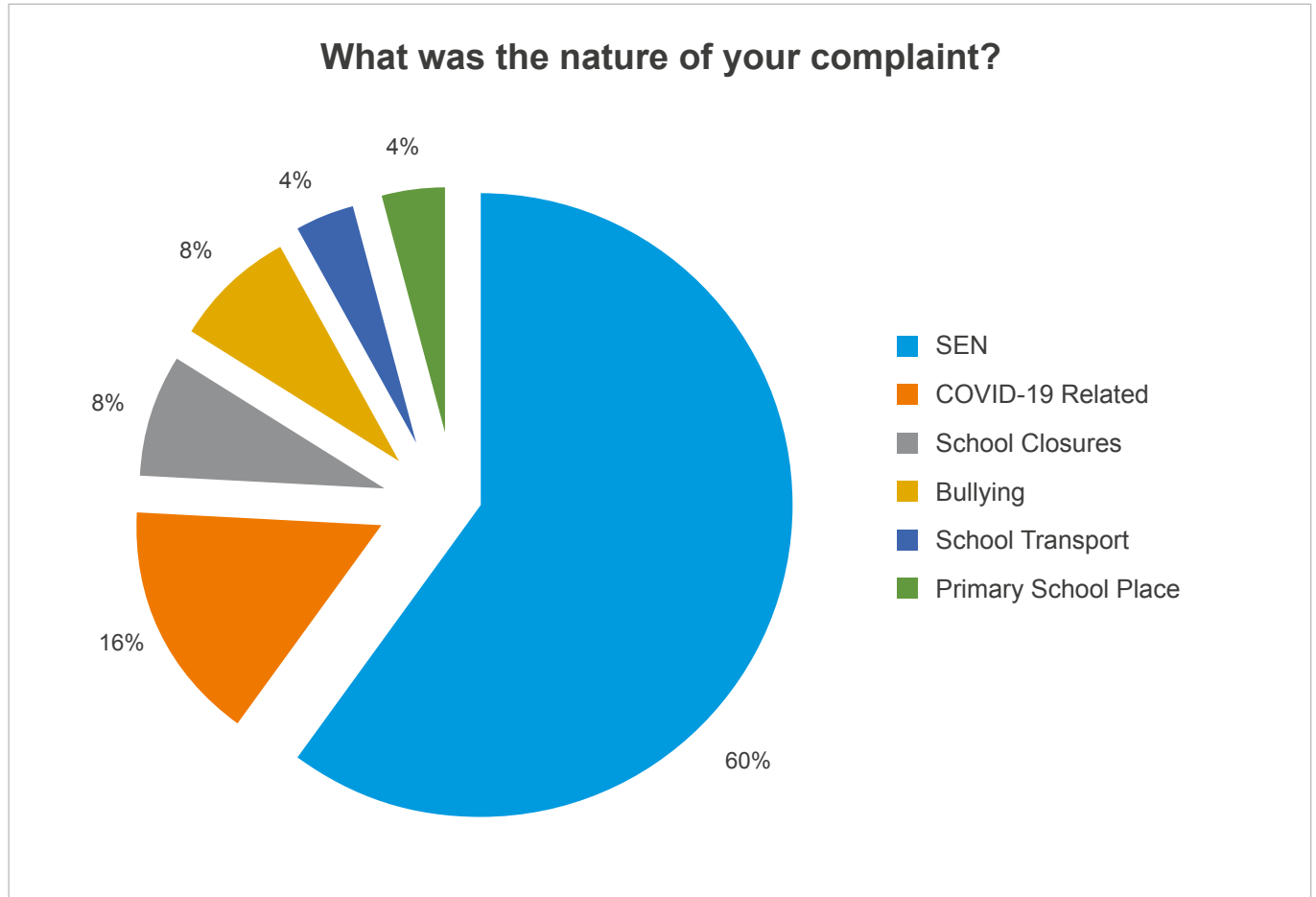
### Question 1 Analysis



23 of the 25 forms returned to us were completed by parents. The vast majority of enquiries we receive are from the parent of a young person so this was to be expected. The other forms returned were from grandparents.

## Question 2 Analysis

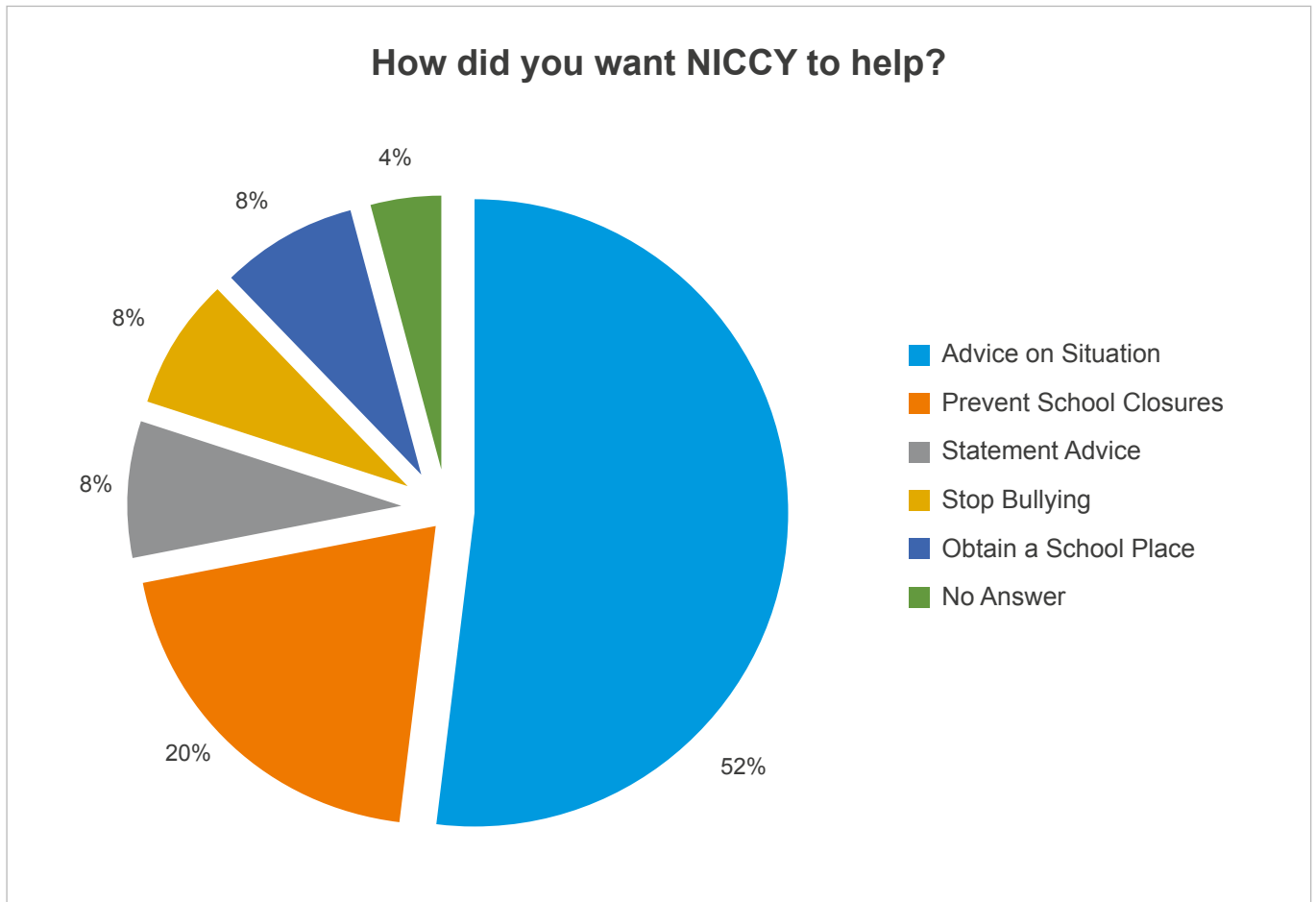
Question 2 establishes the reason for contacting NICCY.



As shown above, the majority of issues on which we received feedback, related to school and education. Most of our complaints casework is focused on educational issues such as SEN and Bullying. This year has been exceptional due to the Covid-19 context and led to an influx of related new complaints.

### Question 3 Analysis

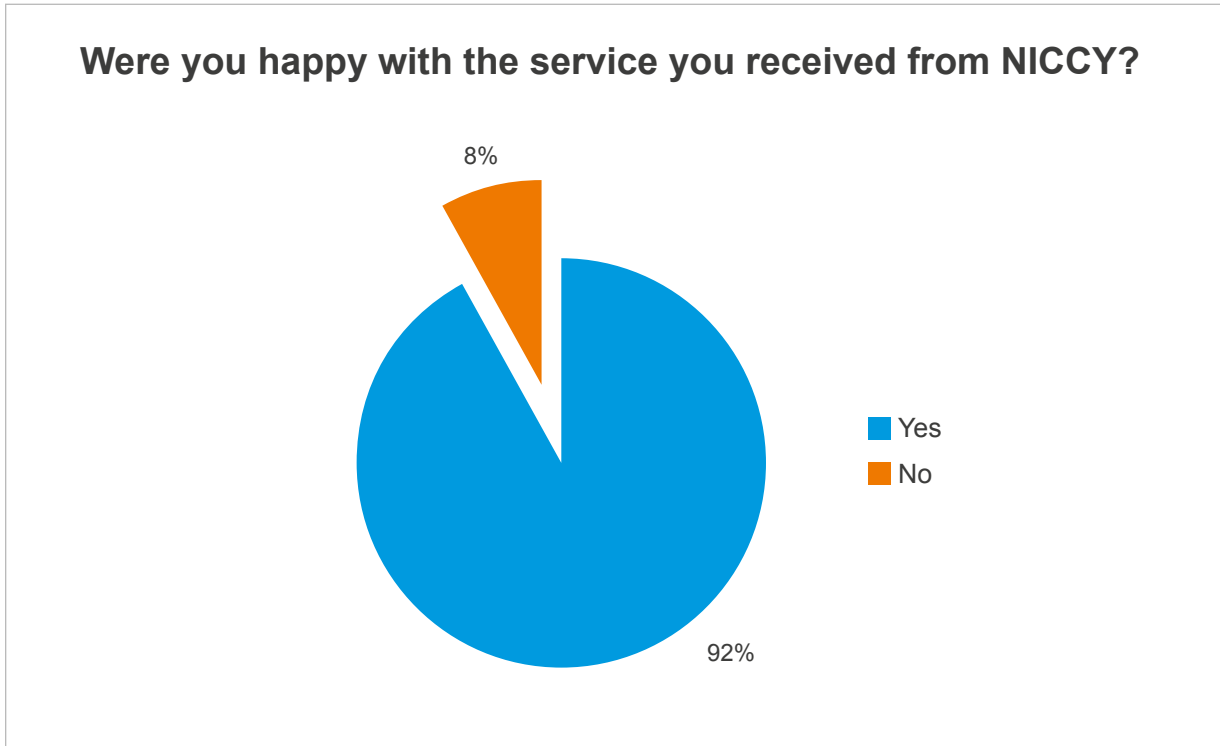
Q3 establishes how the client wanted NICCY to help when they contacted us; in these instances, the breakdown is as follows.



The purpose of this question is to allow us to understand what the client expected from our service. The majority of clients contact us with realistic requests and expectations as to what we can do and meet.

## Question 4 Analysis

Q4 assesses whether clients were happy with the service we provided.



This question sets out client satisfaction. As expected and discussed above, 23 clients who completed the Evaluation Form were satisfied and 2 were unhappy with the service.

The remainder of the form is given over to clients' comments, some of which have been quoted above.

### Conclusion

Previously while we have seen a year-on-year increase in the evaluation form return rate we appreciate the number of Evaluation Forms decreased this year, as stated above due to the pandemic and greater shift to online use. In 2020-21, 92% of those who completed evaluation forms were happy with our service. As in previous years, 100% of the forms received back (within remit) noted high levels of satisfaction.

We will continue to collate evaluations via email as it appears this is the preferred option (though we will send a paper copy in limited circumstances as noted). We will continue to monitor the situation and look for ways to increase the feedback return rate again this year.



## **LEGAL PROCEEDINGS SUMMARY**

As highlighted last year, our direction of travel has been to increase our involvement in external legal proceedings in addressing breaches of children's rights and in so doing benefit greater numbers of others. We also wish to raise the profile of our legal work among the legal community.

NICCY's unique role as the statutory body established to safeguard and promote the rights of children and young people in Northern Ireland, means we will 'add value' to those cases in which we intervene / are asked to intervene and bring the expertise and the 'weight' of the Office to bear which experience tells us, is respected by the Courts.

This year therefore, we have become more active in legal proceedings outside our complaints casework services. Our involvement has been at the request of families and/or legal practitioners keen for expertise, input and advocacy from NICCY as well as the 'weight of the Office' in court proceedings.

### Interventions

▶ 1. In a range of interventions concerning a number of young people in **secure care** with significant learning / mental health difficulties, issues involved included lack of suitable residential accommodation for detained young people, insufficient clarity (including between public authorities) as to which statutory agencies are/ were responsible for particular aspects of care and planning, unsuitable care arrangements and unclear communication with families. Unfortunately, there was and continues to be, considerable delay in discharge and transition planning by the relevant authorities in formulating long-term, patient driven, care packages outside the secure facilities for the young people involved. These delays had and continue to have, an adverse impact upon the emotional and mental well-being of the young people, as well as causing

significant stress to their families. There were 5 cases in total and whilst 2 have been satisfactorily completed, 3 are still ongoing.

The involvement of NICCY in these matters has been in support of families and children and has provided further reassurance to those involved on the specific 'child rights approach'. The contribution of NICCY to this suite of cases to date has helped focus attention on the need for child rights centred strategies, policies and approaches.

- ▶ 2. NICCY intervened in 2 legal challenges against the **admissions criteria** of some post primary schools. This followed the cancelling of the admissions test due to Covid-19. Schools, with their Boards of Governors, had to decide which criteria to use in the absence of the test. The Department of Education has provided guidance to Schools but as this was not mandatory, Schools used their own discretion when deciding which criteria to apply. The judicial reviews launched against the Schools challenged the legality of the school's criteria.
- ▶ 3. NICCY intervened in a judicial review taken against the **Special Educational Needs and Disability Tribunal (SENDIST)** in a case that involved a deprivation of liberty element. The Court found that the role of SENDIST was to determine the appropriateness of education provision and decide on a placement, but that authorisation for any deprivation of liberty was outside SENDIST's remit. Such authorisations are to be sought under the Mental Capacity Act (NI) 2016.



- ▶ 4. NICCY is currently involved in a judicial review being taken by an 8 year old against the restrictions, introduced as part of the wider general Covid 19 restrictions, **banning outdoor sport** amongst children. There was a failure to consult with the Children's Commissioner prior to these regulations coming into effect which is the central aspect of our involvement.

### **Legal Funding Support**

NICCY has a very small budget which it can make available, following an application to our Legal Funding Committee, to support cases if they meet the relevant criteria. During the year under report, we had no applications for financial assistance to assist with initiating legal proceedings.

### **Formal Investigation**

NICCY is continuing with work on its first Formal Investigation using our statutory powers - similar to those of the High Court. This is a complex and lengthy process, however, we are keen to ensure the appropriate outcomes and learning follow from the final report, one which will hold both adverse findings against, and recommendations for, the relevant authorities.

All NICCY Staff involved in this work are undertaking / have completed Accredited Investigative Practitioner Training.

Under the 2003 Order, NICCY is obliged to keep a register of these recommendations to monitor their implementation by relevant authorities and this will be our focus on completion of the formal investigation Report.

We have engaged an '**expert panel**' to provide us with expert opinion to inform our Report, comprising a QC, Social Worker, Child & Adult Psychiatrist and a Paediatrician. The voluminous nature of the documentation under disclosure - which encompasses the span of the young person's life while in the care of the State i.e. in foster care and the care system - necessitates their involvement and analysis required to assist us in completing the investigation.

The final report is due for publication before the end of 2021.



## PROTECTED DISCLOSURES

NICCY is, under the ‘Public Interests Disclosure (NI) Order 1998’ (and subsequent amendments up to 2014) a ‘prescribed person’ to whom ‘protected disclosures’ can be brought by external employees relating to the safeguarding and promotion of the rights and best interests of children and young people in NI. Where individuals raise a genuine concern, this will be treated seriously and investigated accordingly by NICCY, in line with our statutory powers.

To date we have dealt with 12 ‘protected disclosure cases’, having investigated a further 2 cases in the 2020-21 business year. These involved issues of concern in relation to a service provided by the Education Authority and those over safeguarding with the regulatory body for Teachers.

Following investigation, we received the necessary and required assurances from the relevant authorities involved that:

- ▶ the matter had been suitably investigated;
- ▶ Appropriate actions were taken; and
- ▶ Measures put in place to ensure non repetition.

On closure, the ‘originators’ of the Complaints were all contacted and informed of the positive outcomes.

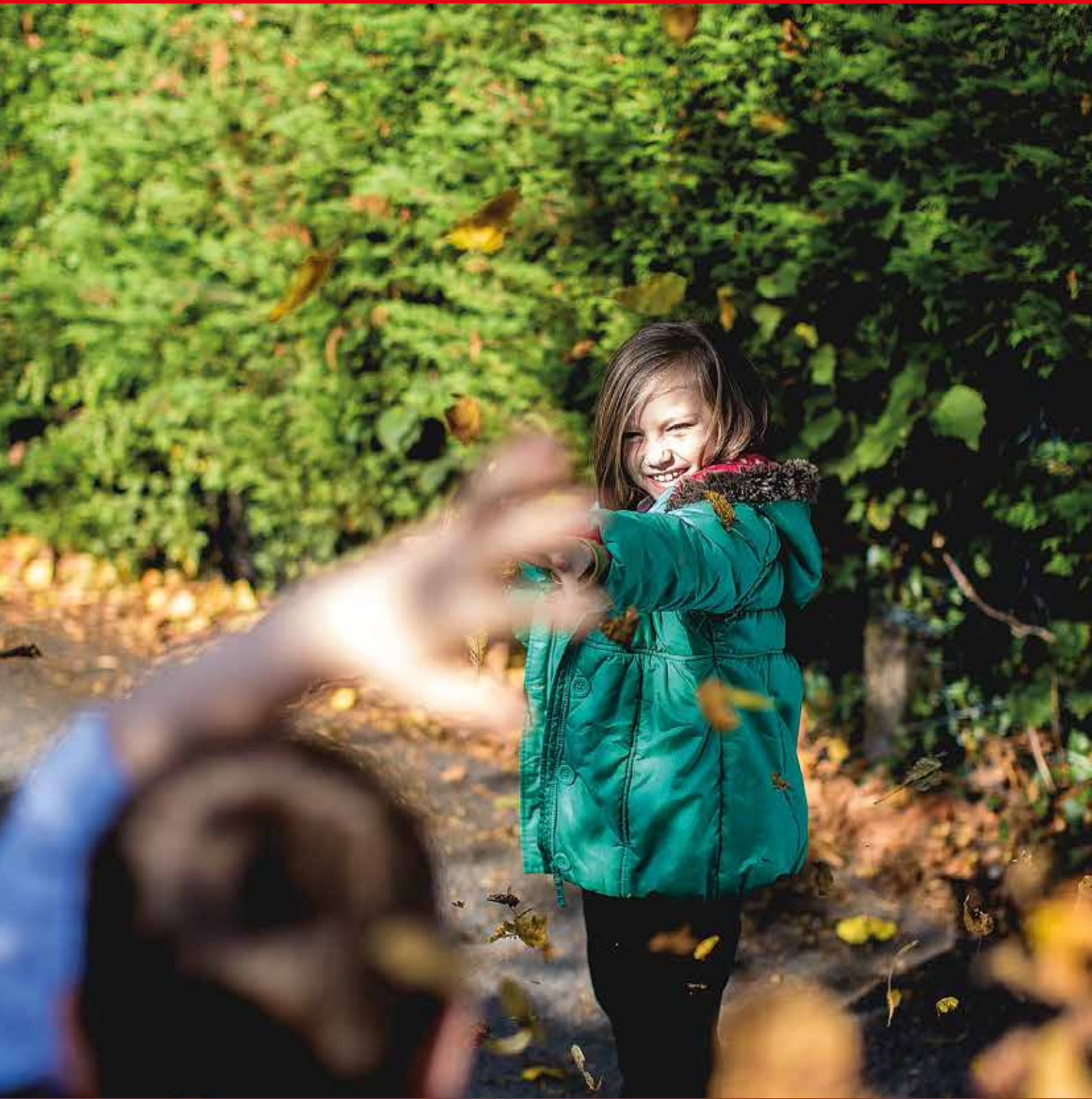
NICCY is obliged to report annually to our Sponsor Department on such disclosures received and does so in our overall Annual Reports.

## Legal CPD Events

We have for some years now, delivered continuing professional development (CPD) events for legal and other practitioners, to promote awareness of children’s rights and their application to practice across the range of professions and disciplines. These have included e.g. ‘*SENDIST: A Practitioner’s Guide*’ delivered by the Tribunal Chair Mr Paul Shevlin; ‘*Better than that: The Family Justice Review*’ delivered by Sir John Gillen; ‘*The Coming of Age of the Children Order*’ delivered by (then) Justice Keegan; etc back to when we started these in 2012 on ‘*The UNCRC: its applicability in domestic cases*’ delivered by Tony McGleenan QC.

Our legal CPD this year, was held during Human Rights Festival week in December 2020. Titled ‘*When to poke your nose in someone else’s business: NICCY and Children’s Rights Cases*’ and delivered by Ciaran White BL – this focused on High Court Judicial Review Challenges, the role of Intervenors and purpose of Interventions. Our Guest Speaker Ciaran, also focused on highlighting some cases where NICCY has intervened and the ‘value added’ as a result. Interventions allow the Court to be presented with additional, relevant and factual material beyond the particular circumstances of the Applicant and supports them in achieving redress of breaches of children’s rights. Feedback on the event was very positive and a number of cases were subsequently referred to us for consideration of intervention following this.

We look forward to developing our next CPD event in 2021.



## LOOKING FORWARD

As stated at the outset of this report, the advent of the Covid-19 pandemic created 'unique' circumstances in which we had to ensure continuity of service delivery and indeed increase and expand our involvement in legal proceedings. While this report focuses on our Complaints casework, we have also provided an overview of some of the other work of the overall team e.g. legal proceedings (interventions) in court cases, our ongoing formal investigation, representation at tribunals, advocacy etc. Our legal cases and outcomes from these, also necessarily, inform NICCY's advice to Government, in collaboration with our Policy & Research colleagues. As you will have seen throughout this report, our legal and investigations work has been growing and expanding due to demand and to our stated intention to enhance and facilitate the need for these across the range of NICCY's legal functions.

This year we have provided evidence to the Ad Hoc Bill of Rights Committee at the NI Assembly established under the 'New Decade, New Approach' Deal (January 2020) and called for 'local' NI incorporation of the UNCRC to better embed and protect the rights of children and young people here. It is our aim to ensure that children and young people live in a society where their rights are respected and realised. Bringing about positive change through our legal work addressing breaches of children's rights - including through ensuring access to appropriate and effective support, services and practice on the part of relevant authorities – is part of this 'journey'. We will continue to contribute to this – including strategically working with others – and remain committed to achieving this in keeping with the legislative remit of the Office.



**Mairéad McCafferty PQH LLM**  
**Chief Executive**







**You can contact the Northern Ireland Commissioner for Children and Young People using the following details:**

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**Referral Form** - if you have need advice, assistance or wish to make a complaint, please use the form on this page [www.niccy.org/referralform](http://www.niccy.org/referralform)

**Protected Disclosures** - NICCY is designated as a Prescribed Person and as such can assist individuals from external organisations who have a disclosure to make on a matter relating to the safeguarding and promotion of the rights and best interests of children and young people. You can find out more at [www.niccy.org/protecteddisclosure](http://www.niccy.org/protecteddisclosure)

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