

**Consultation Response by the Northern Ireland Commissioner for Children and Young People (NICCY) to the Department of Education (DE) on New Admissions Arrangements for Post-Primary Schools**

**The Role of the Commissioner for Children and Young People:**

The Office of Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' 2003.

The principle aim of NICCY is to 'safeguard and promote the rights and best interests of children and young people'. NICCY bases all its work on the United Nations Convention on the Rights of the Child (UNCRC).

The Department of Education's Consultation on New Admissions Arrangements for Post-Primary Schools clearly falls within the remit of NICCY, according to Article 7 (1) (2) (3) (4a,b) of The Commissioner for Children and Young People (Northern Ireland) Order 2003. NICCY therefore welcomes the opportunity to respond to this Consultation.

**Adopting a Rights Based Approach:**

In its concluding observations in October 2002, The UN Committee on The Rights of the Child highlighted a number of concerns including:

*"the lack of a rights-based approach to policy development and the fact that the Convention has not been recognised as the appropriate framework for the development of strategies at all levels of government throughout the State party"*  
(CRC 2002:para14)

NICCY welcomes the fact that the consultation document on New Admissions Arrangements for Post-Primary Schools reflects the UNCRC (Article 3) in that it states, as one of its proposed principles, that the interests of the child will be at the centre of the decision making process (section 2.2; section 5.4).

NICCY would welcome an approach that is unambiguous in ensuring that the 'child's best interests' is the guiding principle. However, it is unfortunate that the consultation document does not reflect a 'rights based' approach to the



development of a policy that will impact on children and young people.

The balance of power in education tends to be in favour of parents' rights, while children do not have the right to representation, consultation or choice (Henricson et al, 2005). This approach sits at odds with the wider societal context in which the rights of children and young people are being promoted. DE must look further at how it approaches the development of policy and ensure that the rights of all individuals are protected and balanced across the generations and that this is reflected in clear and explicit terms in all its consultations and policies.

### **Consultation/Participation of Children and Young People:**

The consultation document refers to the principle of informed parent and pupil choice but goes on to state that:

*"Parents know their children best and it is both their right and responsibility to take key decisions about their children's school" (Introduction)*

There is no reference to direct consultation with children and young people, with the emphasis instead being placed on consultation with and through parents.

Article 12 of the UNCRC states that:

*"States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child"*

Research commissioned by NICCY, and produced by The Queens University of Belfast, highlights the importance of this issue for children and young people and states that participation:

*"(as) enshrined in Article 12 of the CRC, is fundamental to the realization of all children's rights and it is appropriate, therefore, that not being heard, not being allowed to participate in decisions made about them and not being consulted about changes to their lives, big and small, is the single most important issue to children in Northern Ireland" (Kilkelly et al 2004:xxi)*



In examining the UK Governments compliance with Article 12 of the UNCRC in 2002, the UN Committee on the Rights of the Child commented that:

*“In education, school children are not systematically consulted in matters that affect them. The Committee notes that groups of children in the State party expressed their feelings that their views are duly taken into consideration” (CRC 2002 para 29)*

The committee recommended that:

*“procedures be established that would allow the views expressed by children to be taken into account in and to have an impact on developing programmes and policies affecting them.....take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society” (CRC 2002:para 30)*

Section 75 of the Northern Ireland Act (1998) requires public bodies to engage in consultation with those affected by their policies, including people of different ages, race and people with disabilities. The Government therefore has a statutory duty to directly consult with children and young people.

Whilst it is recognised that any consultation with, and participation of, children and young people must take account of their age and maturity, the first consideration should be looking at creative and meaningful ways in which they can be involved. DE should promote and encourage meaningful and direct consultation and participation with children and young people, particularly those who are most marginalized in our society, since marginalized children and young people are those most often excluded from consultation processes.

The Consultation on the Draft Strategy for Children and Young People in Northern Ireland has stated that:

*“the child or young person should be viewed as an active participant as opposed to a passive object of concern. It was important that the vision should not just be aspirational but also relevant and achievable” (OFMDFM 2004: para 4.2.2)*

It must also be recognized that there is potential conflict between the interests of children and parents. Children may fundamentally disagree with their parents' decisions about the post-primary school they wish him/her to go to. NICCY



takes the view that children and young people should not only be directly involved in general consultation processes; they should also be actively engaged in more specific discussions and decision making about the school they wish to attend.

NICCY would contend that when children and young people are involved in processes in a way that acknowledges and respects their standing as active and valued citizens, then both the education system and wider society will benefit. Not to engage children and young people in consultation or actively encourage their participation weakens the underlying principles and objectives stated by DE in the consultation document.

Under the heading of 'Principles and Objectives' (section 2.2), the consultation document refers to a further principle; that the process will be free from bias or indirect discrimination against particular groups or individuals. It is NICCY's view that by not engaging children and young people in the consultation process in a meaningful way, the significance of this principle is considerably diluted.

It is NICCY's view that not only should consultation with children and young people be evident in this process, this should also extend to parents.

NICCY strongly recommends direct consultation by DE on the issue of new arrangements as this has a major impact upon the future lives of children.

### **Specific Issues Arising from Consultation Document:**

#### **A. Pupil Profiling (sections 3.4 – 3.11)**

It is suggested that the new pupil profile will have a significant part to play in helping parents make informed choices about which school their child should go to, based on a clear understanding of their child's personal development, educational needs, capabilities, and aptitudes. The pupil profile will tell parents about the 'level' at which their child is assessed to be at, and will be compiled for each school year. It will play a significant part in determining the type of post-primary provision a child is directed to. There will be ongoing opportunities for discussion between the parent and school. This would appear to be, in large part, in keeping with current practices wherein schools arrange parent/teacher interviews annually to discuss the child's progress based on



formal school reports. The pupil profile may present as a more enhanced version of this.

DE conveys the notion that parents will somehow be placed in a position of power with the introduction of this approach. However, in practice, parents are likely to defer to the school's views and judgment regarding their child's progress, particularly with regard to the assessment of the child's educational needs.

The document as a whole, and the pupil profile in particular, reflects a bland assumption that parents can and will engage in this process. It assumes that parents can participate on an equal basis and in a way that ensures their child's best interests are served. It shows a lack of understanding of the realities for many parents and children. Research shows that parents often feel they cannot engage in discussion with schools for a variety of reasons. Sometimes there are tensions between the schools and parents. There are also very vulnerable and marginalized parents who experience multiple indices including poverty and trauma, and have limited coping mechanisms.

Literacy issues for parents may also prove to be a barrier to ensuring participation. In Northern Ireland 24% of the adult population aged 16–65 years perform at the lowest level of prose literacy ability as defined by the internationally agreed measurement instrument of the International Adult Literacy Survey. The adults most likely to perform at level one are those in low income brackets, those in receipt of social security benefits, those who are unemployed and with those with low levels of educational attainment (Educational Guidance Service for Adults, 2000). Lundy (2001:35) states that:

*"A review of the procedures which are involved in the admissions process leads to the inevitable conclusion that the way in which the system is operated favours the literate and articulate, a finding which would appear to be in contravention of the Department of Education's obligation under New TSN to ensure that "public information is communicated effectively to disadvantaged people so that they are aware of the benefits available to them".*

Kilkelly et al (2004:95) further note that within the:

*"traveller community, which is classified in law as a racial group, there are low levels of literacy, with Travellers often not able to receive prescriptions because they could not read instructions as to how to administer drugs"*



There have also been considerable demographic changes in Northern Ireland in recent years with some primary schools reporting significant increases in the number of children from ethnic minority families. Language barriers may also hinder the participation of parents, children and young people. The availability of interpreters is limited and consequently:

*“some minority ethnic parents find it difficult to liaise effectively with their children’s school and hence play a full and proper role in their children’s education” (Kilkelly et al 2004:138)*

NICCY acknowledges the DE’s efforts in developing a Common Funding Formula policy that takes account of the need to provide additional support to children for whom English is an additional language.

The consultation document sets out ‘an ideal’ that does not take account of the fact that not all parents can participate in the process in the way DE describes.

Article 18 (2) and (3) of the UNCRC states that:

*“State parties are required to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”*

Article 2 of the UNCRC states that:

*“all rights in the Convention apply to all children without exception, and the State has an obligation to protect children from any form of discrimination”*

Article 3 of the UNCRC states that:

*“all actions concerning the child should take account of his or her best interests”*

Given the absence of direct consultation with children and young people and DE’s emphasis on both the importance of consultation with parents and the notion of ‘informed choice’, it is imperative that DE gets this right. DE must make provision through proper assistance and using creative mechanisms to engage parents in a meaningful way. These mechanisms should be available and accessible to all parents. In the absence of such provision, the use of pupil profiles as a basis for discussion will have little impact for marginalized parents and children and the whole process will, in effect, mitigate against certain groups, and fail to ensure that the child’s best interests are served.



DE is aware of the need to be creative and diverse in developing approaches to engaging parents in the education and school life of their children. It has been providing some funding for these purposes through the Education Boards. However, the resources directed to this area have been limited. It was noted in the research carried out by Queen's University on behalf of NICCY, that in relation to the whole post-primary review:

*"Doubt was expressed about whether the resources exist to implement the changes properly, particularly when the change is accompanying the implementation of the curriculum review" (Kilkelly et al 2004:125).*

DE must give consideration to ensuring that resources are directed in a way that reduces social exclusion. In its observations in relation to Irish and Roma Travellers, the UN Committee on the Rights of the Child stated concern:

*"at the gap between policies and service delivery" (CRC 2002:para 51)*

There is very little point in DE working towards policy change in the education sector unless this is met by appropriate levels of resourcing to ensure service delivery. This should include the delivery of initiatives aimed at specifically addressing the issue of participation of marginalized groups.

The consultation document does not address the further matter of maintaining records about the child's personal development, educational needs, capabilities, and aptitudes. This is a particularly important issue with regard to children from communities that are often transient, for example children from the Traveller community or refugee families. To date there appears to have been:

*"(a) lack of effective mechanisms for collecting and monitoring data on applications for admission and selection, school suspensions and exclusions, school attendance and educational achievement (including levels of achievement at formal Key Stages) for Traveller children" (Kilkelly et al 2004:138)*

DE must ensure that the application of pupil profiling takes account of some of the obstacles that could prevent the development of clear and consistent record keeping in a way that could disadvantage some children.



## **B. Advice from Post-primary Schools (section 3.11)**

It would be difficult for the post-primary schools to take an objective position with regard to providing advice. The 'advisory' nature of the post-primary schools role could be open to abuse, with schools being placed in a position to exert pressure on parents to make particular selections that in some instances could result in some children being discriminated against.

Parents may feel 'bullied' into accepting particular recommendations. It is important that parents and children and young people have access to independent advice and support in making these decisions.

## **C. Advice from DE/Education and Library Boards (sections 3.12 – 3.13)**

Information booklets should be accessible for all parents, children and young people in a format that is easily understood by them. All information should be parent and child friendly.

Advice and guidance provided via websites and helplines is not accessible by all parents, children and young people. Although over 60% of households in Northern Ireland with dependent children and young people have access to the internet; those households without access to this resource may be the ones that are most disadvantaged and most in need of support and guidance (NISRA, 2002 cited in OFMDFM, 2004).

Arrangements should be made for parents from ethnic minorities who do not have English as a first language and other parents who have particular circumstances where help is needed.

## **D. Continuing Advice during Post-Primary Education (sections 3.14 – 3.17)**

Mechanisms to involve and support parents, children and young people should continue through post-primary in order to ensure that ongoing consultation regarding the young person's progress happens in a meaningful way.

NICCY would welcome the development of a flexible approach to post-primary education that takes account of and acknowledges the fact that every child is



different and that children mature and develop at different ages.

The best interests of children and young people should be the foremost consideration in directing them through the post-primary sector (Article 3 UNCRC). This should be done with the full involvement of the young person (Article 12 UNCRC). NICCY welcomes the DE's proposal to:

*"ensure that pupils are involved in any discussion about future educational provision" (section 3.17)*

NICCY also welcomes DE's proposal that the final decision regarding the young person's future educational provision should rest with the parent and young person.

### **E. Compelling Individual Cases (sections 4.2 – 4.5)**

NICCY would contend that consideration of compelling cases should focus on the individual circumstances of each child. In doing so, the best interests of the child can be served (Article 3 UNCRC).

In order to ensure that the best interests of the child is central to any decision making process, NICCY would also take the view that the list of children and young people, who may be considered under this category, should not be restrictive. For example, restricting compelling cases to children with medical conditions and looked after children would exclude cases where there was severe bullying, including children who are subjected to homophobic bullying or bullying because of race or ethnicity. McVeigh; (1998) and Morgan (1999) found that:

*"many Traveller children experience racially-motivated bullying and social isolation in mainstream schools" (cited in Kilkelly et al 2004:139)*

Racial bullying is clearly an issue and should present as a reason for referral under 'compelling individual cases'.

### **F. Central Panel (section 4.7)**

The use of a central independent panel to decide on compelling individual cases is the only way of ensuring that the child's best interests, in keeping with



Article 3 UNCRC, and not the schools are foremost in this process.

It is not just the size and composition of the Central Panel that should reflect the fact that there will be diversity in the cases being brought before it; the procedural aspects of the operation of the Central Panel should also take account of the child's right to be heard (Article 12 UNCRC). NICCY would urge DE to look at ways of ensuring children and young people and their parents are independently represented in this process

### **G. Admissions Criteria for Oversubscribed Schools (section 5.4)**

Whilst the principle of the interests of the child should be at the centre of the decision making process (Article 3 UNCRC), it is difficult to see how this can be the guiding principle in situations where a school has too many applicants for too few places.

DE's view that demographic trends in Northern Ireland resulting in falling roles in many schools will, in the long term, ensure that schools are not oversubscribed is very optimistic. This may not significantly change patterns of behaviour, based on perceptions about what are the best schools.

Some schools will continue to be more popular than others, resulting in the continued application of selection criteria. This will inevitably result in some children not accessing the school that, theoretically, their parents in consultation with teachers (using pupil profiles) identified as the most suitable school for the child. In short, there will be some form of selection.

This raises a broader question about how those schools that are perceived to perform less well can be supported in a way that demonstrates the importance of alternatives to more academic study. Article 28(a)(b) UNCRC requires States to:

*"recognise the right to education and with a view to achieving this right progressively and on the basis of equality of opportunity, they shall in particular...encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child"*

If all schools are supported properly and are resourced so that their profile is more attractive to parents and young people, enabling them to see the potential



benefits of schools which offer alternatives to more academic study, there will likely be a greater willingness to opt for schools that offer children this choice. Such developments would offer parents and children real choice, allowing a child's talents and abilities to be the central basis of discussion as regards the whole admissions process.

This is an issue about which there has already been much debate. However, it is important that it is addressed again within the consultation on New Admissions Arrangements for Post-primary Schools.

The task of finding the most appropriate criteria for determining admissions to post-primary schools loses significance if there is no broad commitment to ensuring that schools that are perceived to be less successful, or that provide alternatives to more academic study, are provided with the additional resources to raise their profile as educational establishments. In the absence of such a commitment, parents and children may not view these establishments as viable alternatives.

NICCY welcomes Government initiatives such as the creation of Education Action Zones and its continued recognition of social deprivation and educational underachievement by taking these issues into account in the formula used to determine schools' budgets. However, there are concerns that the level of funding currently available for education is not sufficient to fill the gaps and that this will become even more stretched with planned changes in the education system. Additional resources must be targeted and sustained so that those schools which need additional support are lifted out of the quagmire.

## **H. Family-Focused Criteria (section 5.8)**

The use of these criteria reflects a family and child friendly approach, however, it does not necessarily put the child's educational needs at the centre of the admissions process.

## **I. Community Based Criteria (sections 5.9 – 5.10)**

Where post-primary schools select their traditional or new feeder primary schools and this is used as a basis for deciding admissions; there is a danger that the best interests of the child (Article 3 UNCRC) would take a back seat to those of the post-primary school.



## **J. Geographical Criteria (sections 5.11 –5.13)**

The use of geographical criteria may actually reduce choice for parents and children. The consultation document refers to data collected in relation to distances traveled by pupils to post-primary schools in the period 2002/03 (Appendix 3, Table 4). The information shows that children who attended the Grammar sector traveled greater distances to get to these schools, suggesting that parents and children are prepared to travel to access the school of their choice. This choice would be taken away from them in the event of geographical criteria being applied. Furthermore:

*“It is known that neighbourhood deprivation and educational underachievement are connected due in large part to the nature of school admissions based on geographical criteria. Numerous studies show that this type of admissions policy leads to higher house prices near popular schools which reduces the opportunity for poorer families to access more ‘effective’ schools. Research also shows that parental choice tends to lead to separation in schools on the basis of factors like race and class” (NICVA, 2005)*

The ‘child centred catchment’ approach would provide the most solid base in human rights terms for decision making. It would, on the basis of the DE’s outline of the criteria, put the child at the centre of the admissions process, ensuring that s/he has access to the closest possible suitable school. However, the significance of this approach is diluted when one considers that some children may be directed to schools that are not equipped to meet their needs, because the school is poorly resourced. The best way of ensuring that parents and children have real choice and that the child’s best interests are served is if schools are properly resourced and supported to provide for the diverse needs of pupils.

The UN Committee on the Rights of the Child noted in 2002:

*“the increased resources for the implementation of the Convention and some positive moves towards analyzing budgets to identify the expenditures on children, the national objective to halve child poverty by 2010 and eradicate it within a generation and the strategies and policies to tackle child poverty and social exclusion through locally targeted services for children, the Committee remains concerned that the Convention is not implemented to the ‘maximum extent of ... available resources’ as stipulated by article 4 of the Convention” (CRC 2002:para 10).*



The Committee recommended that:

*“the State party undertake an analysis of all sectoral and total budgets across the State party and in the devolved administrations in order to show the proportion spent on children, identify priorities and allocate resources to the “maximum extent of ... available resource” (CRC 2002:para 11).*

The Government's New Targeting Social Need agenda (NTSN) aims to tackle inequalities in education, and promote social inclusion by taking action to improve the life and circumstances of the most deprived and marginalised people in the community. To repeat an earlier point, the selection of admissions criteria has to be viewed against the broad backdrop of Government policy. Currently in Northern Ireland, 32,000 (8%) children are living in severe poverty, with 38% of our children identified as deprived of one or more child necessities (NI Anti-Poverty Network). The Queen's research commissioned by NICCY highlighted the fact that poverty is a major obstacle in preventing children and young people from asserting their rights. Ensuring the best interests of the child (Article 3 UNCRC), non-discrimination (Article 2 UNCRC) and an education that is best suited to meeting the child's needs (Article 29 UNCRC), means working towards tackling social exclusion and economic disadvantage.

### **K. Format of Menu (section 5.15)**

There should be consistency with regard to the menu used for admissions. Lundy (2001:38) states that:

*“an effective way to improve access for parents would be to improve the quality of the admissions criteria in use”*

The Department's guidance states that criteria should be:

*“objective, clear and easily understood by all concerned. They should be capable of easy verification by parents and appeal tribunals” (DENI Circular 15/99:para9.5)*

The same menu should apply to all schools in order to reduce the complexity of the system and ensure it is understood by parents and children. Schools should not therefore have the option of deciding on the criteria they use from an open menu.



'Child centred catchment area' criteria should be compulsory for all schools and should feature at the top of the menu. While this, as part of the geographical criteria still raises some issues as outlined above, it is the most suited from a human rights perspective.

### **L. Admissions Appeals (sections 6.1 – 6.3)**

The grounds for appeals should be reduced if there is a clear and consistent menu used across schools and the child centred catchment criteria is placed as a compulsory element at the top of the menu.

### **M. Appeals Tribunal (sections 6.4 –6.8)**

The independence of the Appeals Tribunal must be assured. ELB's must be clear about the the list of tribunal members they are drawing from.

Parents can bring representation to the process, but the young person must also be given an opportunity to be heard (Article 12 UNCRC). The process should allow for independent representation for the child.

It is acknowledged that these processes are formal settings and require a clear procedural framework. However it has to be recognised that this can be intimidating and frightening for parents and children. It is therefore important that every effort is made to ensure that parents and children are accommodated and made to feel 'at ease' in the functioning of the appeals process. This should take account of everything including venue, timing and the language used.

### **Conclusion:**

NICCY recognizes that the new admissions arrangements for post-primary education is a very emotive issue in Northern Ireland and there will be many conflicting views presented in response to this consultation document.

It is NICCY's view that any changes in the development of policy should be informed by a consultation process that is inclusive of young people and their parents. DE has not shown due regard to this issue.



While it is our hope that DE places the rights and best interests of the child at the centre of its final decision making, the 'good will' to do so is not enough. This must be accompanied by clear action with regard to addressing fundamental issues such as those outlined above.



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