

**Committee for the Office of the First Minister and Deputy First Minister**

**Children's Services Co-operation Bill Response pro forma**

For your convenience the Committee has prepared the attached pro forma to assist in responding to the main clauses of the Bill. The Bill can be found at <http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/childrens-services-co-operation-bill-as-introduced/>

Please respond by Friday 27 February 2015 to [committee.ofmdfm@niassembly.gov.uk](mailto:committee.ofmdfm@niassembly.gov.uk).

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**I wish for my organisation to be considered for oral evidence sessions in relation to the Committee's scrutiny of the Bill: Yes**

Clause	Comments (200 words)
<p data-bbox="188 240 405 268"><b>1. General Duty</b></p> <p data-bbox="188 309 539 368"><b>Please provide comment on:</b></p> <ul data-bbox="188 411 539 1123" style="list-style-type: none"> <li data-bbox="188 411 539 676">• <b>The six specified outcomes relating to the well-being of children and young people as listed in the 10 Year Strategy for Children and Young People 2006 - 2016</b></li> <li data-bbox="188 719 539 948">• <b>The duty on Northern Ireland Departments to co-operate with each other in order to further the achievement of these objectives</b></li> <li data-bbox="188 991 539 1123">• <b>The mechanism in place for amending the specified outcomes</b></li> </ul>	<p data-bbox="580 240 2042 539">The Children’s Law Centre (CLC) very much welcomes the Children’s Services Co-operation Bill (Northern Ireland) 2015, the aim of which is to introduce a statutory duty to co-operate which will place a legal obligation on the Northern Ireland Departments to co-operate with each other in discharging their functions in the achievement of the six high levels outcomes of the Children’s Strategy 2006 - 2016. CLC has long been an advocate of the introduction of statutory duty to co-operate on Government and we believe that it creates a unique and exciting opportunity to improve the well-being of children and young people, as well as advancing the realisation of children’s rights in Northern Ireland. We recognise the opportunity that this Bill presents for all children and young people in Northern Ireland and in particular, for those children who are vulnerable, excluded, marginalised and most in need.</p> <p data-bbox="580 582 2042 1382">We are however concerned that placing a duty on Government Departments to exercise their functions to further the achievement of the six high level outcomes in the Children’s Strategy is dependent on the continuation of these outcomes over the lifetime of the next Children’s Strategy. Consultation on a new Children’s Strategy is in the initial stages and while these 6 high level outcomes are currently in place for the Children’s Strategy these may be subject to change as a result of consultation. We do not think that it would be constructive for the consultation on the new Children’s Strategy for Northern Ireland to be pre-determined or fettered by the introduction of the Children’s Services Co-operation Bill (Northern Ireland) 2015 and would suggest that the development of the Children’s Strategy needs to take cognisance of any emerging Bill. To future proof the legislation CLC would suggest that the Bill, rather than stating the 6 specified outcomes of the Children’s Strategy 2006 – 2016 in the body of the Bill, should refer to the high-level specified outcomes of the Children’s Strategy currently operative. Recognising the obligations incurred by virtue of Government’s ratification of the United Nations Convention on the Rights of the Child (UNCRC), we would further suggest that the Bill explicitly include an obligation for Government Departments and agencies to co-operate in carrying out their functions to give effect to Government’s obligations under the UNCRC. This obligation should underpin the specified outcomes of all future Children’s Strategies which the Bill should make clear reference to, but not specify as these may be subject to change. The Children’s Strategy and future Children’s Strategies should be developed in consultation with children and young people and their advocates, with input from the Committee of the Office of the First and Deputy First Minister and other stakeholders. This will allow for cognisance to be taken of evolving priorities and emerging issues in children’s lives, the provision of children’s services and developing standard of children’s rights. It is CLC’s view that it is important that the Bill includes an obligation for Government Departments and agencies to co-operate in carrying out their functions to further respect for and ensure the delivery of children’s rights given they are duty bearers in respect of obligations under the UNCRC. CLC believes that it will also be necessary, following the agreement of the specified outcomes to develop statutory guidance, which should be publicly and widely consulted upon including directly consulted upon with children and young people to clarify the</p>

operation of the legislation to ensure that all parties understand their obligations under the legislation. This will be of considerable assistance in the practical interpretation of the legislation and to aid legal compliance with the legislation. Should the Bill become law during the lifetime of the current Children's Strategy the Children and Young people's Strategic Partnership will have an important role in the development of this guidance based on the current specified outcomes, given that they plan and commission children's services under each of the current specified outcomes of the Children's Strategy 2006 - 2016. In addition, CLC wishes to see the inclusion of a clear definition in the Bill to the term 'functions' and we would refer you to Section 98 (1) of the Northern Ireland Act 1998 which defines the term functions for the purposes of section 75 of the Northern Ireland Act 1998. Section 98 (1) states that 'functions' includes 'powers and duties' of a public authority.

CLC is extremely supportive of the need for better co-operation by Government in the delivery of children's services and we have consistently called for the introduction of a statutory duty on Government Departments to ensure collaboration and co-operation to ensure the effective delivery of services for children and young people in Northern Ireland. We believe that the duty **needs to be expanded to include statutory agencies carrying out functions in relation to children and young people** to ensure co-operation between central Government and agencies of Government including Education and Library Boards (ELBs), Health and Social Care Trusts (HSCTs), the Police Service of Northern Ireland (PSNI), the Youth Justice Agency (YJA) and others and UK Government Departments and relevant agencies in the discharging their functions which relate to children in this jurisdiction. This is particularly important with regard to the Northern Ireland Office's functions and with regard to immigration and refugee and asylum seeking children who are the responsibility of the Home Office. We highlight this group of children in particular in the context that the four United Kingdom Children's Commissioners have raised concerns about the fact that due to nationality and immigration, including asylum, being a reserved matter that this, "...can lead to tensions between legislation, policy and practice at devolved and non-devolved levels."<sup>1</sup> The Report from the Commissioner also states that, "Across the UK, children seeking asylum experience serious breaches of their rights. The child's best interests are not a primary consideration in immigration decisions. Immigration control takes priority over human rights obligations to children seeking asylum and their families."<sup>2</sup> In addition, research carried out by the Northern Ireland Assembly<sup>3</sup> commented that, Northern Ireland does not have a refugee integration strategy and highlighted this as a particular issue for Northern Ireland, where research

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<sup>1</sup> UK Children's Commissioners' Report to UN Committee on the Rights of the Child, June 2008.

<sup>2</sup> *Ibid.*

<sup>3</sup> Refugees and Asylum Seekers in Northern Ireland NIAR 348-14, NI Assembly Research and Information Service Research paper, Michael Potter, 6<sup>th</sup> June 2014.

has suggested that integration is more difficult in a divided society, both in terms of acceptance in communities that have experienced conflict<sup>4</sup>, but also in terms of the newcomers being seen within the parameters of the conflict<sup>5</sup>. CLC recognises that the inclusion of an obligation on UK Government Departments to co-operate with Northern Ireland Departments and agencies when exercising their functions in relation to Northern Ireland, may present drafting and constitutional legislative challenges, however we would again refer the Committee to section 75 of the Northern Ireland Act 1998 which places statutory equality obligations on public authorities, including some UK public authorities who are either designated through inclusion within Section 75 (3) of the Northern Ireland Act 1998 or who are designated through an Order in Council made by the Secretary of State. We would again emphasise the importance of protecting the rights of all children in Northern Ireland, regardless of the particular Departmental portfolio or if the matter is devolved, reserved or excepted.

The importance of co-operation and collaboration at a central Government level was recognised by the First and Deputy First Ministers within the Programme for Government for Northern Ireland 2011 - 2015 which refers to “...the importance of collaboration; ... as well as working more effectively across Government Departments...”<sup>6</sup> However, it is CLC’s experience that there is very little evidence of partnership working at a cross-Departmental or agency level in reality. We believe that the recognition by the First and Deputy First Minister of the importance of collaboration and working more effectively across Government Departments within the Northern Ireland Executive’s Programme for Government 2011 – 2015 places a clear onus on Government Departments and agencies to support and commit to the introduction of a statutory duty to co-operate and to work more effectively in partnership with each other to deliver tangible outcomes for the public in Northern Ireland and more specifically for children and young people.

There is further recognition that cross-Departmental co-operation, collaboration and joined up working does not operate particularly well in Northern Ireland, from the Minister for Justice who has recognised the failure by Government Departments to work together in a coordinated manner when he stated that,

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<sup>4</sup> Charlotte-Anne Malischewski (2013), Integration in a Divided Society? Refugees and Asylum Seekers in Northern Ireland, Working Paper Series No 91, Oxford: Refugee Studies Centre.

<sup>5</sup> South Tyrone Empowerment Programme (2010), Research to identify additional difficulties faced by minority ethnic groups and migrant workers due to the conflict in N. Ireland, Dungannon: STEP.

<sup>6</sup> Page 12, Programme for Government 2011 – 2015.

*“Our overall strategic arrangements for children are fairly weak and not very well coordinated. We need a much stronger focus on a more joined up approach to early intervention. We talk about early intervention but we don't actually join up between different departments terribly well”<sup>7</sup>*

Given our experience and noting the recognition by the Minister for Justice that cross Departmental co-operation does not operate well at present, CLC is very supportive of the introduction of a clear legal obligation on Government Departments, agencies and UK Government Departments to work together in the interests of meeting the needs of the ‘whole child’ in a holistic way which has the best interests of the child as the paramount consideration in the delivery of services for all children and young people in Northern Ireland.

We have briefly addressed the issue of the mechanism proposed for amending the specified outcomes above and would reiterate our belief that the specified outcomes of the Children’s Strategy should not be explicitly contained in the legislation. It is the view of CLC that the Bill should make clear reference to the outcomes of any current Children’s Strategy, but not specify these in the interests of future-proofing the Bill. This would avoid the need for modifications to the specified outcomes in the Bill to be made by, ‘the Office... as it thinks appropriate’ and subsequent to the adoption of every new Children’s Strategy. The Children’s Strategy and future Children’s Strategies should be developed through intensive engagement and consultation with children and young people and their advocates, with input from the Committee of the Office of the First and Deputy First Minister and other stakeholders. All modifications to the specified outcomes of the Children’s Strategy should come about as a result of this engagement and consultation to ensure that modifications to the specified outcomes are as a result of intensive engagement on the Children’s Strategy which allows for evolving priorities and cognisance to be taken of emerging issues in children’s lives and the provision of children’s services

Closely aligned to the need for increased co-operation and collaborative working at central Government level and to best meet the needs of children as early as possible in their lives, in a way which ensures the best use of public money, is the need for a clear focus in the delivery of services for children and young people on early intervention and prevention. It is widely accepted that investment in health, education and family support in the early years of children’s lives has a significant impact on their future life chances and that moderate investment by Government Departments on early intervention and prevention will circumvent the need for extremely high levels of spending later in a child’s life when they have not had their needs met at the most appropriate stage. We believe that there is a clear acknowledgement that investment in early intervention and prevention will secure

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<sup>7</sup> Minister’s Address to Include Youth Conference, *“Getting the Right Youth Justice...engaging with the findings of the review of the Youth Justice System in Northern Ireland”* 27<sup>th</sup> October 2011

better outcomes for children and young people and their communities and society. We also believe that a clear commitment by all Government Department and agencies to the introduction of a legal obligation to work together to deliver for children through a statutory duty to co-operate, will create a renewed and welcome focus on investment in early intervention and prevention to provide services which meet the needs of children and young people in their best interests at the earliest possible stage in their live. It will also result in a more effective use of public money.

CLC believes that the needs of children and young people must be met at the earliest possible stage in order for those young people to have their rights upheld and develop to the maximum extent possible in line with the Government's obligations under the UNCRC. One of the CLC's main concerns, which it has consistently raised with Government Ministers, MLA's, Assembly Committees and Departmental officials with regard to children's rights relates to the invisibility of children and young people in policy planning at central Government level, including within the Government Budget Allocations and the Programme for Government.

CLC is experiencing first hand the impact of these cuts on some of our most vulnerable children and young people through a significant increase in the number of calls to our CHALKY helpline in respect of children who have had educational support, allied services, and mental health services either not provided in the first place or withdrawn. The impact of a failure to provide adequate services for children and young people with additional needs in communities and schools is likely to have the consequence of further marginalising and social excluding children from society, their community and school. One example of the impact on children and young people of the failure by Government to co-operate to make early intervention and prevention a priority is the relationship between education and children coming into contact with the criminal justice system. Research has shown that a lack of statutory education was one of the main factors associated with youth offending and re-offending<sup>8</sup>. Low attainment in education, persistent truancy, exclusion and Special Educational Needs are some of the most prevalent risk factors associated with offending behaviour. With a great many services being withdrawn from vulnerable children and young people who require additional support in school as a result of a lack of funding it is clear that many young people will have an experience of education which is entirely irrelevant to them. One can only conclude that this will increase the risk of children and young people coming into contact with the criminal justice system which is so costly both economically<sup>9</sup> and in human terms with regard to the lifetime outcomes of children and young people.

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<sup>8</sup> Youth Justice Board, "A Summary of Risk and Protective Factors Associated with Youth Crime and Effective Interventions to Prevent It", YJB 2005

<sup>9</sup> The current cost of keeping a young person in the JJC is £268,000 based on an average occupancy in 2010/2011 of 27 – Page 17, Announced Inspection of Woodlands JJC (November 2011)

	<p>It is fundamental that the needs of vulnerable and marginalised children and young people are identified and met through adequate service provision at the earliest possible stage in line with the Northern Ireland Executive's obligations under the UNCRC. It is therefore central to the success of this statutory duty to co-operate in terms of meeting the needs and upholding the rights of children and young people that Government Departments and agencies invest cross departmentally in early intervention and prevention services for vulnerable children and young people. We would be extremely supportive of this being reflected in the development of the legislation on a statutory duty to co-operate. CLC wishes to see consideration being given to the inclusion of an obligation on Government Departments and agencies to co-operate in discharging their functions to further respect for and the delivery of children's rights and to achieve the specified outcomes of the Children's Strategy. In particular, CLC would welcome in the drafting of the statutory duty to co-operate an explicit reference to a statutory duty to co-operate at the earliest possible opportunity. CLC believes that this would emphasise the need to meet the needs of children and young people at the earliest possible stage in their lives. This would place an obligation on Government and agencies to give effect to early intervention and prevention in the discharge of their functions as they relate to children and young people.</p>
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Clause	Comments (200 words)
<p data-bbox="185 240 557 272"><b>2. Co-operation Report</b></p> <p data-bbox="185 308 557 371"><b>Please provide comment on:</b></p> <ul data-bbox="185 411 557 914" style="list-style-type: none"> <li data-bbox="185 411 557 643">• <b>The requirement for OFMDFM to publish periodically a report on the progress of departments towards achieving the specified outcomes</b></li> <li data-bbox="185 683 557 914">• <b>The requirement for other Northern Ireland Departments to co-operate in the preparation and publication of the report</b></li> </ul>	<p data-bbox="575 240 2056 576">With regard to the proposed obligation in the Bill for the Office to prepare and publish a report within three years of the passing of the Bill and at three yearly intervals CLC believes that such reports should be produced annually. We note that the Bill currently states that reports should address how each Northern Ireland department has discharged its functions, co-operated with other Northern Ireland Departments in the achievement of the specified outcomes , increased efficiency and effectiveness which has resulted from the co-operation, furthered opportunities for co-operation between Northern Ireland Departments which could help achieve the specified outcomes and any other ways the specified outcomes could be achieved. In light of our comments above we wish to see both this and the requirement to co-operate in the preparation and publication of the report being amended to include both statutory agencies and UK Government Departments in the exercise of their functions as they relate to children and young people in Northern Ireland.</p> <p data-bbox="575 616 2056 1279">With regard to the timeframe for the production of reports, CLC believes that given the fact that the Northern Ireland Government is a devolved Government of the signatory to the UNCRC that the timeframe for the production of reports should be compliant with the obligations of the UNCRC. As stated above, CLC wishes to see a clear legal obligation being contained in the Bill for Northern Ireland and UK Departments and agencies to co-operate in carrying out their functions to further respect for and the delivery of children’s rights. It our view that this should be a constant and rolling consideration for the Northern Ireland Government in exercising its functions with regard to children and young people given the ratification of the UNCRC by the UK Government. We therefore wish to see a legal obligation in the Bill for reporting in co-operation to occur on an annual basis, as expected by the Committee on the Rights of the Child. The UN Committee on the Rights of the Child in its General Comment No. 5 on General measures of Implementation for the Convention on the Rights of the Child<sup>10</sup> suggests that such reports, offering an overview of the state of children’s rights and progress on delivery on children’s rights, be produced annually. CLC would therefore be supportive of these reporting obligations being an annual requirement and think that this would improve the effectiveness, transparency and accountability of the process. It would also lead to better monitoring and improved collection of data in respect of children. Annual reporting would be in line, not only with the requirements of the Committee on the Rights of the Child, but also in line with the requirements of section 75 of the Northern Ireland Act 1998 which places an obligation on Government to put in place annual monitoring systems and to report annually on progress on the implementation of the arrangements specified in their equality scheme to promote the Section 75 statutory duties<sup>11</sup>, which apply to children and young people. In addition, The Child Poverty Act 2010 requires an annual report to detail the progress which has been made towards fulfilling the statutory duty of eradicating child poverty by 2020. Each</p>

<sup>10</sup> General Comment 5 General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27<sup>th</sup> November 2003

<sup>11</sup> “Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities”, Equality Commission for Northern Ireland, Revised April 2010.



Government Department is required to submit reports to OFMDFM. As OFMDFM is the Government Department with responsibility for the co-ordination of the Government's obligations under the UNCRC and the Child Poverty Act 2010 as well as overall responsibility for section 75 of the Northern Ireland Act 1998, we believe that monitoring and reporting across all these duties should be consistent and should happen on an annual basis. While we are aware that it has been suggested that annual reporting mechanisms can be bureaucratic and onerous, CLC believes that appropriate reporting mechanisms will ensure the effectiveness of the operation of the statutory duty to co-operate and should also ensure transparent implementation, all of which should be in the interests of all Government Departments and agencies and OFMDFM in particular. It will also lead to better outcomes for children.

CLC is extremely supportive of the obligation in the Bill for the Northern Ireland Departments to co-operate with each other in relation to the preparation and publication of the report. This is necessary to ensure that the duty to co-operate is not the preserve of one Department, namely OFMDFM and that all Government Departments work together on the implementation of the duty and also on evidencing how they have implemented the duty as well as ways identified to better contribute to the specified outcomes. CLC has been critical in the past of the apparent unwillingness of some Government Departments to contribute to co-ordinated reports and Strategies. We believe that it is vital that there is a legal obligation on Government Departments to co-operate with OFMDFM in relation to the preparation and publication of reports. In line with our suggestion above that the duty be extended to include not only Northern Ireland Government Departments, but also UK Government Departments and statutory agencies we wish to see this section being amended to place a legal obligation on UK Government Departments and statutory agencies to co-operate with each other in relation to the preparation and publication of the report.

Clause	Comments (200 words)
<p data-bbox="185 240 557 304"><b>3. Sharing resources and pooling funds</b></p> <p data-bbox="185 341 557 405"><b>Please provide comment on:</b></p> <ul data-bbox="185 442 557 743" style="list-style-type: none"> <li data-bbox="185 442 557 743">• <b>The enabling power which will permit Northern Ireland departments to establish pooled budgets and shared resources to achieve the six outcomes in clause 1</b></li> </ul>	<p data-bbox="575 240 2056 507">With regard to the enabling power which will permit Northern Ireland Departments to establish pooled budgets and shared resources to achieve the six specified outcomes, CLC does not believe that this is strong enough and we would be supportive of the ‘enabling power’ being replaced by a <b>statutory obligation</b> on Northern Ireland and UK Government Departments and agencies to pool budgets and share resources to further respect for and the delivery of children’s rights. Such a duty will better ensure the realisation of the specified outcomes of the Children’s Strategy and will be in the interests of meeting the needs of the ‘whole child’ in a holistic way with the best interests of the child as the paramount consideration in the delivery of services for all children and young people in Northern Ireland.</p> <p data-bbox="575 544 2056 1050">The need for Government to work together and to pool budgets and share resources is an imperative which CLC has consistently raised as one requiring urgent legislative enactment. We would be very supportive of a clear legal obligation on Northern Ireland and UK Government Departments and agencies to pool budgets and share resources a statutory duty on Government Departments and agencies. We believe this will lead to further respect for and the delivery of children’s rights. Such an obligation will also assist in the achievement of the specified outcomes of the Children’s Strategy and we believe will go some way to best meeting the needs of children as early as possible in their lives and in a way which also ensures the best use of public money. The need for tis obligation has become more urgent given the current climate of Government funding cuts and pressure on limited resources. We firmly believe that the need to make best use of finite resources for the population of Northern Ireland and children and young people in particular provides the Northern Ireland Executive with a critical impetus for prioritising efforts to make cross-Departmental, inter-agency working a priority. Based on evidence available to CLC from our free phone advice line, we do not believe, given the reluctance by Government Departments to date to meaningfully co-operate, that an enabling power will achieve the level of budgetary and resource co-operation and collaboration that is required to achieve the delivery of children’s rights and the specified outcomes of the Children’s Strategy.</p> <p data-bbox="575 1086 2056 1284">In our response to the Green Party in Northern Ireland’s Consultation in its Proposals for a Private Members Bill to Introduce a Statutory Duty to Co-operate on Government Departments in the Planning, Commissioning and Delivery of Services to Children in Northern Ireland<sup>12</sup> CLC provided a case example outlining why a statutory duty to co-operate which includes a clear legal obligation on Government Departments to pool budgets and share resources for the provision of children’s services is so necessary for children and young people, particularly some of the most vulnerable children and young people in our society. We provide the case example below for the</p>

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<sup>12</sup> June 2012

Committee's consideration.

### **CLC's Case Example - Our Experience of the Interface between Health and Education and the Need for A Statutory Duty to Co-operate**

CLC is experienced in advising, assisting and representing children and young people who have special educational needs (SEN) and/or disabilities and who rely on statements of special educational needs, incorporating input from both education and health professionals.

During the year to 31<sup>st</sup> January 2012, 34% of all enquires received by CLC related to education law (SEN, school admissions, pupil welfare, school exclusions). 15% of all enquiries to the service related to identification, assessment and provision of services for children with special educational needs.

In terms of the level of need within the school population, at least 25% of the school population has some kind of barrier to learning. Figures from the 2011 school census show that 20.7% (over 65,000 children) of the school population are on the SEN register. Statements of special educational need are held by 4.4% (over 14,000) of the school population. The vast majority of children (over 90%) on the SEN register are educated in mainstream schools and units attached to mainstream.

The experience of CLC is that, particularly in the current economic climate, the lack of a statutory duty to cooperate is having an increasingly negative impact upon the manner in which inter-departmental resources are prioritised and upon the way in which provision is allocated to children who have special educational needs and disabilities. This in turn is having a significant adverse impact upon equality and inclusion.

**Article 24(2)(e) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)** recognises the right of persons with a disability to **inclusive education** and imposes an obligation to ensure that **“effective individualised support** measures are provided in environments that **maximise academic and social development, consistent with the goal of full inclusion”**.

However, in contrast, the principle of early intervention is not sufficiently adhered to within the current system, with the result that children's difficulties continue to escalate and become more costly to resolve. There are long-standing inconsistencies and delays in SEN assessment and provision which are damaging to children's educational, social and emotional development. A significant factor is the lack of a statutory duty to cooperate between the Department of Education (DE) and the Department of Health Social Services and Public Safety (DHSSPS), which causes dispute and delay, even in clear cut cases where it has been established that a child

needs a service to be provided.

On a practical level, many children are experiencing a myriad of negative consequences due to being left behind and left out at school, as their peers advance in their learning and general development. Parents often struggle to gain access to support for their children and relate their experiences as an exhausting running “battle” with schools and ELBs.

The absence of a qualified statutory duty to cooperate between the DE and the DHSSPS alongside ongoing budget restrictions affecting these two departments have been impacting upon special educational provision made available by Education and Library Board's (ELBs), Health and Social Care Trusts (HSCTs) and schools in Northern Ireland for a considerable number of years due to:

- (a) growth in the numbers of children who have special educational needs;
- (b) increasing numbers of children with complex special educational needs; and
- (c) ongoing difficulties in resourcing and managing the practical operation of the Department of Education (DE) policy of inclusion for children with SEN and disabilities in mainstream education as per the rights within the Special Educational Needs and Disability (NI) Order 2005 (SENDO).

SENDO strengthens protection for school children who have a disability, reinforcing the right to be educated in mainstream schools. They are protected from disability discrimination at school and schools have a duty to make reasonable adjustments to enable children with a disability to have equality of access to education. This is the principle of inclusive education.

**In the majority of education cases where there is an interface between health and education, equality of access to education is adversely affected when health trusts and education boards choose not to cooperate in meeting the child's needs. The lack of a statutory duty to cooperate is at the heart of many of the disputes which parents and children bring to the CLC for consideration, specifically with regard to the pooling of budgets and sharing of resources.**

In terms of legal responsibilities, **health trusts have a qualified duty under Article 14 of the Education (NI) Order 1996 to assist ELBs** in providing services, such as allied health services, for children with special educational needs. **The qualification of the duty is that it is subject to the availability of resources to the health trust.** In the absence of an unqualified statutory duty to cooperate, ELB officers are responsible for drafting the statement, having sought reports (referred to as advices) from all relevant sources including allied health professionals such as occupational therapists and speech and language therapists. It established law that

these therapies are capable of amounting to “educational provision” to be arranged by ELBs, even though they are provided by health professionals.

A properly drafted statement which sets out clearly a child’s special educational needs shall normally specify and quantify provision to meet those needs, unless there is a good reason linked to the child’s needs not to do so.<sup>13</sup> In our experience, statements are generally not properly drafted, being vague and lacking individualized provision.

Once an ELB officer places a therapy in the sections of the statement headed “educational needs” at Part 2 of the statement and “educational provision” at Part 3 of the statement and states how often the therapy is to be given (either voluntarily or upon an order of the SENDIST), the ELB becomes legally responsible for ensuring the therapy is provided. If a health trust refuses to cooperate, the ELB has an obligation to source the therapy elsewhere. The parent of the child can legally enforce such specified and quantified therapy if it is not provided and may take a legal action against the ELB.

**As a result, the vast majority of statements which are brought to us for consideration are drafted so as to be legally unenforceable which is damaging to the interests of children, who in many cases are denied access to therapies without which they are unable to access the curriculum. That is to say, such statements have therapies wrongly inserted in the section headed “non-educational needs” and the level of therapy is not quantified (e.g. in hours per week). ELBs are not legally obliged to provide for “non-educational needs” and vaguely worded statements cannot be properly enforced.**

By way of example, in one of our cases an ELB and a HSCT failed to provide any therapies for a young child for a very significant period of time despite the fact that the child had been assessed as requiring these to access education. The HSCT were unable to resource therapies and therefore had no legal obligation to assist the ELB. CLC represented the parents and child at a Special Educational Needs and Disability Tribunal (SENDIST) hearing and obtained an order that the therapies were educational needs and stating the amount of the therapies that should be provided.

The ELB tried to arrange the therapies within the statutory time limits for compliance with a SENDIST Order. The HSCT refused to provide the therapies. The dispute remained ongoing for a number of months with ongoing wrangling between the ELB and the HSCT. At the point when a judicial review was the only course of action, agreement was reached as to the provision of therapies and these were put in place. The manner in which the

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<sup>13</sup> Para 4.21 Code of Practice - Statements should “normally be specific, detailed and quantified.”

agreement operated was complex and was not at all child-friendly. This was a most unsatisfactory outcome with delay and frustration for the child and parents in a relatively straightforward clear cut case where legal entitlement had been established.

**In terms of the practical workings of the system under the 1996 Order, it is CLC's experience that resources are frequently at the heart of decision making rather than the needs of the child and the lack of a statutory duty to cooperate specifically with regard to pooling of resources frustrates and delays due process, undermining the integrity of the legal framework which protects children with SEN and disabilities.** This problem is continually expanding, alongside the growth in the number of school children on the SEN register and the shrinking resources within DE and DHSSPS.

**It must also be noted that the vast majority of the children in our schools who have special educational needs, do not have a statement of special educational needs and therefore do not have access to an accessible legal enforcement mechanism to ensure they receive allied health services as part of their education. There is no mechanism to enable parents or schools to access therapy at the point of need. In many cases services are delayed or refused or children are simply not identified who may need therapeutic input at school.**

On 16<sup>th</sup> May 2012, the Minister for Education gave a briefing to the Education Committee in which he outlined proposals that Personal Learning Plans (PLPs) would replace Individual Education Plans (IEPs) and that significantly, **PLPs will contain any relevant external support for the school or the pupil.**

This is a significant development and we remain very concerned about the more complex cases where there is a dispute about the need for external support, such as health therapies, at the school based stages of the special educational needs system. PLPs will be non-statutory, legally unenforceable documents with no effective legal right of appeal attached. A PLP carries no mechanism for ensuring a child receives ELB support or therapies to meet educational needs from the allied health services in cases of dispute between parents, schools, HCSTs and ELB. Nor would staff from a mainstream school have the expertise to place such supports within a PLP.

**It is in our view even more urgent now in light of the out-workings of the review of special educational needs and inclusion by the Department of Education, to ensure the creation of an unqualified statutory duty to cooperate between Government Departments which places a clear statutory duty on Government Departments to pool resources and share budgets in the best interests of children.**

Education officers and health staff do currently share a level of cooperation regarding educational provision,

however there is no absolute statutory duty to cooperate to ensure that the special educational provision for and inclusion of children are guaranteed. The mechanisms for cooperation are far from transparent.

**The impact of this is that the best interests of children using a “whole child approach” are not at the heart of decision making and neglect of children’s interests creates inefficiencies, ultimately increasing costs to both departments in assisting the child later in life and in defending legal actions.**

Further, it is CLC’s experience that reports and evidence provided by health professionals and ELB professionals are increasingly vague and use “coded” language to express what a child needs, with no specific identifiable legally enforceable recommendations which can be transferred into a statement of SEN. We believe this is the result of resource-based pressures upon the system. **This has implications for the procedural integrity of the SEN system, undermining children’s rights to access specific supports to meet their needs and leaving Health Trusts, ELBs, the Department and professional employees who give evidence in disputed matters, open to negligence claims.**<sup>14</sup>

By way of example CLC was asked to provide advice, assistance and representation for a child with excellent academic ability who has cerebral palsy and who attends a mainstream school. She uses a wheelchair and is able to walk with assistance. She requires regular daily physiotherapy in order to maintain her mobility and to access the wider curriculum. Due to the lack of cooperation between health and education and the resource implications for the ELB of conceding that physiotherapy was an educational need in this case as well as a failure by the HSCT to provide for the child, this child was denied physiotherapy in a mainstream school, which she would have been able to access in a special school. She was expected to remain seated for 8 hours per day. This caused great distress and discomfort with the result that the child became acutely aware of her disability and her grades dropped considerably. The dispute carried on for over two years. CLC commissioned a private physiotherapy report as part of ongoing legal proceedings in which we provided legal representation. Ultimately, after several hearings and lengthy negotiation, the matter was settled and arrangements made for therapy input. The child is doing very well at school, achieving excellent grades and engaging with all aspects of the curriculum, in keeping with her true potential.

**The unwillingness/inability of the health trusts to recommend and provide direct therapeutic support (in mainstream schools and increasingly also in special schools) and the concomitant reluctance of the ELBs to specify therapies as educational needs on the statement or to make provision at the school-based stages needs to be urgently addressed by placing a legally enforceable statutory obligation on**

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<sup>14</sup> Jones –v- Kaney [2011] UKSC 13 removes immunity from legal claims against expert witnesses in relation to breach of duty in contract or negligence

**Government Departments and agencies to co-operate, particularly with regard to the pooling of budgets and sharing of resources to meet the needs of children and young people.**

**In our view, from a children's rights perspective there is no valid argument that can be made against a statutory duty to cooperate between Government Departments and agencies in the delivery of children's services. This must include a clear enforceable legal obligation on Government Departments and agencies to pool budgets and share resources.**

**Government Departments and agencies need to be aware of the consequences of a failure to provide necessary services for children such as those highlighted above which may result in judicial reviews, discrimination claims, negligence actions and claims for damages, all of which may be much more costly in the longer term, particularly where children have not been enabled to access the curriculum to their full potential.**



Clause	Comments (200 words)
<p data-bbox="185 237 557 304"><b>4. Children’s Services Planning</b></p> <p data-bbox="185 341 557 408"><b>Please provide comment on:</b></p> <ul style="list-style-type: none"> <li data-bbox="185 445 557 847"> <p data-bbox="185 445 557 647">• <b>The requirement for the Health and Social Care Board to review and publish a children and young people’s plan, including:</b></p> <ul style="list-style-type: none"> <li data-bbox="286 647 450 679">○ <b>Content</b></li> <li data-bbox="286 679 499 746">○ <b>Review mechanism</b></li> <li data-bbox="286 746 557 847">○ <b>Co-operation between public bodies</b></li> </ul> </li> <li data-bbox="185 884 524 951">• <b>The public bodies listed at Clause 4 (7)</b></li> <li data-bbox="185 987 539 1190">• <b>The duties placed on the Health and Social Care Board particularly with regard to monitoring and reporting</b></li> </ul>	<p data-bbox="575 237 2042 408">CLC is supportive of the requirements contained within the Bill with regard to the Health and Social Care Board. CLC understands that this section of the Bill will give legislative effect to the current operation of the Children and Young People’s Strategic Partnership (CYPSP) which is responsible for the statutory process of Children’s Services Planning and operates as a cross-sectoral strategic partnership. CLC understands that the purpose of this clause of the Bill is to ensure that this work continues as it does currently.</p> <p data-bbox="575 445 2042 544">CLC believes that the inclusion of a number of agencies within this section of the Bill further emphasises the need for the duty to co-operate to be extended to include statutory agencies as well as Northern Ireland and UK Departments and relevant agencies.</p> <p data-bbox="575 580 2042 815">CLC wishes to see the insertion of a clause requiring consultation with children and young people as well as, ‘relevant public bodies’ with regard to reviews or modifications of children and young people’s service plans. This should include an enforceable duty to take into account the views expressed through consultation. This would be in line with the obligation under section 75 of the Northern Ireland Act 1998 to carry out direct consultation with children and young people. In addition, the Safeguarding Board for Northern Ireland is under statutory obligations to promote communication between the Board and children and young people and to consult on safeguarding and promoting the welfare of children.<sup>15</sup></p> <p data-bbox="575 852 2042 1190">We note that this section of the Bill (4 (3)(b)) places an obligation on the Regional Board to keep under review the children and young people’s service plan and to prepare and publish modifications to the plan at intervals of not more than three years. In the interests of consistency and children’s rights compliance CLC believes that the timeframe for monitoring and review and publication of modifications to the plan should be annually in line with the obligations of the UNCRC and as expected by the Committee on the Rights of the Child as outlined in its General Comment No. 5 on General measures of Implementation for the Convention on the Rights of the Child.<sup>16</sup> General Comment No. 5 suggests that reports which offer an overview of the state of children’s rights and progress on the delivery of children’s rights should be produced annually. CLC would therefore be supportive of these review and reporting obligations being an annual requirement and believe that this would improve the effectiveness, transparency and accountability of the process.</p>

<sup>15</sup> Section 3 of the Safeguarding Board Act (Northern Ireland) 2011 and Regulation 19 of the Safeguarding Board for Northern Ireland (Membership, Procedure, Functions and Committee) Regulations (Northern Ireland) 2012

<sup>16</sup> General Comment 5 General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27<sup>th</sup> November 2003

**Do you have any suggested amendments to the Bill? (200 words)**

CLC would suggest that the Bill, rather than stating the 6 specified outcomes of the Children's Strategy 2006 – 2016 in the body of the Bill refers to the high-level specified outcomes of the Children's Strategy. We would also recommend that the Bill explicitly includes an obligation for Government Departments and agencies to co-operate to give effect to Government's obligations under the UNCRC. This obligation should underpin the specified outcomes of all future Children's Strategies which the Bill should make clear reference to, but not specify as these may be subject to change in the interests of future-proofing the Bill.

CLC wishes to see the statutory duty being expanded to include statutory agencies to ensure co-operation between central Government and agencies of Government including Education and Library Boards (ELBs), Health and Social Care Trusts (HSCTs), the Police Service of Northern Ireland (PSNI), the Youth Justice Agency (YJA) and others and UK Government Departments and relevant agencies in discharging their functions which relate to children in this jurisdiction.

CLC believes that it will also be necessary, following the agreement of the specified outcomes to develop statutory guidance, which should be publicly and widely consulted upon including directly consulted upon with children and young people to clarify the operation of the legislation to ensure that all parties understand their obligations under the legislation. This will be of considerable assistance in the practical interpretation of the legislation and to aid legal compliance with the legislation. In addition, CLC wishes to see the inclusion of a definition in the Bill to the term 'functions' and we would refer you to Section 98 (1) of the Northern Ireland Act 1998 which defines the term functions for the purposes of section 75 of the Northern Ireland Act 1998. Section 98 (1) states that 'functions' includes 'powers and duties' of a public authority.

The Children's Strategy and future Children's Strategies should be developed through intensive engagement and consultation with children and young people and their advocates, with input from the Committee of the Office of the First and Deputy First Minister and other stakeholders. This would avoid the need for modifications to the specified outcomes in the Bill to be made by, 'the Office... as it thinks appropriate' or subsequent to the development of each new Children's Strategy. CLC believes that all future specified outcomes of a Children's Strategy should come about as a result of this engagement and consultation to ensure that they reflect evolving priorities and take cognisance of emerging issues in children's lives and the provision of children's services.

With regard to the proposed obligation in the Bill for the Office to prepare and publish a report within three years of the passing of the Bill and at three yearly intervals CLC wishes to see an amendment to the Bill to place a statutory obligation on the Office that such reports should be produced annually. We wish to see the requirement to co-operate in the preparation and publication of the report being amended to include both statutory agencies and UK Government Departments and relevant agencies in the exercise of their functions as they relate to children and young people in Northern Ireland.

With regard to the enabling power which will permit Northern Ireland Departments to establish pooled budgets and shared resources to achieve

the six specified outcomes, CLC does not believe that this is strong enough and wishes to see the 'enabling power' being replaced by a statutory obligation on Northern Ireland and UK Government Departments and agencies to pool budgets and share resources to further respect for and the delivery of children's rights and achieve the specified outcomes of the Children's Strategy. This we believe will be in the interests of meeting the needs of the 'whole child' in a holistic way and in a manner which has the best interests of the child as the paramount consideration.

CLC wishes to see consideration being given to the inclusion of an obligation on Government Departments and agencies to co-operate in discharging their functions to further respect for and the delivery of children's rights and to achieve the specified outcomes of the Children's Strategy. In particular, CLC would welcome in the drafting of the statutory duty to co-operate an explicit reference to a statutory duty to co-operate at the earliest possible opportunity. CLC believes that this would emphasise the need to meet the needs of children and young people at the earliest possible stage in their lives. This would place an obligation on Government and agencies to give effect to early intervention and prevention in the discharge of their functions as they relate to children and young people.

CLC wishes to see the insertion of a clause requiring consultation with children and young people as well as, 'relevant public bodies' with regard to reviews or modifications of children and young people's service plans. This should include a duty to take into account the views expressed through consultation.

**Do you have any other comments? (200 words)**

CLC wishes to reiterate its support for the Children's Services Co-operation Bill (Northern Ireland) 2015. We believe that the Bill presents a unique opportunity to deliver children's services in a better way, which will promote the well-being of children and contribute to the realisation of their rights. While we have suggested amendments to the Bill, these suggestions have been made in the interests of being constructive and strengthening the draft provisions contained in the Bill at present and to ensure better compliance with international children's rights standards.