

Submission by the Northern Ireland Commissioner for Children and Young People to the Ad Hoc Committee on Conformity with Equality Requirement, Welfare Reform Bill.

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with the 2003 Commissioner for Children and Young People (NI) Order with the primary aim of safeguarding and promoting the rights and best interests of children and young people in Northern Ireland.

NICCY has a statutory duty to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The Commissioner has publically stated her concerns regarding the potential impact that the Welfare Reform Bill and subsequent regulations will have on children and young people across Northern Ireland. We commissioned two reports on the issue of Welfare Reform which were launched on 26th April 2012 entitled "Welfare Reform Making Children Visible: Assessing the Impact on Children" and "Welfare Reform Making Children Visible: The Partiy Question"¹. The Commissioner also submitted written evidence to the Department for Social Development (DSD) Committee on 19th October 2012 and gave oral evidence on 25th October 2012.

The Commissioner called in her oral evidence to the DSD Committee for the Bill and subsequent regulations to be scrutinised against the standards set out in the UNCRC to ensure that the Bill and Regulations are not only Human Rights compliant but also Child Rights compliant. This submission

¹ <http://www.niccy.org/article.aspx?menuid=14265>

builds on our foregoing reports and evidence from the perspective of children's rights particularly in relation to the relevant provisions of the UNCRC.

The UNCRC was the first legally binding international instrument to incorporate the full range of human rights - civil, cultural, economic, social and political.

The four core principles of the Convention are non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and respect for the views of the child (Article 12). These four principles permeate the Convention, however all the rights contained in it are indivisible and should be read in conjunction with the core principles and all of the other rights.

By agreeing to undertake the obligations of the Convention the UK, as a State Party, have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. They are also obliged to develop and undertake all actions and policies in the light of the best interests of the child and my role is to advise Government and if necessary challenge Government if this does not happen. It is with this in mind that I make my submissions to this Ad Hoc Committee.

I will turn to the specific Articles of the UNCRC which are engaged and potentially infringed by the Welfare Reform bill shortly but it is important to place on record again my entire dissatisfaction regarding the EQIA which has been produced by the Department in this regard.

I wrote to the Minister in November 2011 expressing my concerns that the Department had failed to meet their statutory responsibility under Section 75 to assess the impact of these proposed policies on children and young people and asking him to review the EQIA. The Minister responded to me in December 2011 indicating that the EQIA document

specifically stated the "Department does not, as a matter of course, monitor certain s75 groupings for the purposes of administering the system in Northern Ireland, primarily because benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these Section 75 categories". I concur with the submission of the Equality Commission for Northern Ireland in their December 2011 response to the EQIA when they state:

"It is not acceptable for an EQIA to merely record that no data is available². Furthermore, in the absence of any data no comments can be made on potential effects. It is incorrect to simply assume that "social security benefits are paid to individuals on the basis of entitlement and conditions which are in no way affected by affiliation to any of these s75 categories " ³

I would reiterate again, that although generally children are not direct recipients of benefits, any change to the benefits system which is paid to any member of a family, irrespective of who the claimant is, would have an impact on the children of the family.

I note that the officials in their briefing to this Ad Hoc Committee on 27th November 2012 recognise that there are data limitations in the EQIA which have been highlighted by stakeholders. I am pleased to hear that they are looking at options of how to address these deficiencies and consider the document to be a "living document". I would urge, again, the Minister to conduct a further EQIA to ensure that the potential impacts on children and young people in particular are assessed.

At this juncture it is important to preface my specific remarks regarding the potential incompatibilities of the current Bill with children's rights, by reiterating how difficult it is to make firm submissions in the absence of the

² References to ECNI (2005): Practical Guidance on Equality Impact Assessment, para2.9 page 14.

³ Page 23 of original DSD EQIA consultation document.

regulations which will contain the details of the practical application of the Bill. This is a concern that I know is shared by both ECNI and the Northern Ireland Human Rights Commission and other agencies. I reiterate the call of the NIHRC for the regulations and secondary legislation to be subject to the affirmative resolution procedure in the Assembly in due course.

As set out above, the UNCRC and compliance with same should be the starting point when assessing the Bill for its impact on children's rights. General Comment No 5 (2003) from the Committee on Children's Rights confirms this.

In assessing the impact of the Welfare Reform Bill on children in Northern Ireland certain key rights under the UNCRC are particularly relevant. These are:

Article 2: The right to enjoy all human rights, without discrimination.

Article 3: That the best interests of the child must be a primary consideration.

Article 4: State parties shall take all appropriate measures to implement children's economic, social and cultural rights to the maximum extent of their available resources.

Article 6: The right to live and to development "to the maximum extent possible".

Article 7: The right for children to know and as far as possible to be cared for by their parents.

Article 9: Children must not be separated from their parents unless it is in their best interests. Every child has the right to stay in contact with both parents unless this might harm them.

Article 12: The right for children to participate and express their views.

Article 16: The right to private and family life.

Article 18: Both parents share responsibility for bringing up their child and Governments must help parents by providing services to support them, especially of the child's parents work.

Article 19: The right to protection from maltreatment.

Article 23: The right for disabled children to enjoy a "full and decent life", and their right to "special care" and assistance.

Article 24: The right to enjoy "the highest attainable standard of health".

Article 26: The right to benefit from Social Security.

Article 27: The right to a standard of living adequate for the child's development Governments must help families who cannot afford this.

Article 28: The right to education.

With these specific rights in mind I now turn to assess various implications of the Bill against this framework.

Regarding the proposals which impact on housing benefit, I welcomed the flexibility that the Minister was able to secure regarding direct payment to landlords. However, the proposed housing benefit cap for social housing rented sector has potential to have a major impact on children and young people as it currently stands which may infringe some of the above rights. The reduction of housing benefit on the basis of "under occupancy" may mean that single claimants may need to move to single room accommodation. This will impact on claimants who are the non-resident carer of children (accepted to be in most cases a separated father) who will be unable to offer overnight contact to their children. This could infringe upon the child's rights under Articles 7 and 9 regarding being cared for and staying in contact with both parents.

Similarly, disabled children can require an additional room for equipment etc. Again, any reduction based on under occupancy could detrimentally impact on their rights under Article 23 (children with disabilities) and Article 27 (right to an adequate standard of living).

In assessments for under occupancy there are possible implications for foster parents who may require additional bedroom on an ad hoc basis and also parents of children in temporary care, who may return home.

Further, any cap or cuts to housing benefit which may require a family to move house could cause a child to become disconnected from their community, school and/or leisure activities. All of which are protected by individual rights under the UNCRC, as well as the core rights which are read in conjunction with the specific articles.

We submit therefore that in order to uphold the rights of children in circumstances such as the above that the Department should ensure that housing benefit assessments of non resident parents, parents of disabled children, foster carers and parents of children in temporary care are conducted in such a way so as to take into account of the best interests of the children when making the decisions as to housing benefit entitlement.

The conditionality and sanction regime under the Bill has potential to infringe on the rights and best interests of children and young people (Article 3) who, in families which have potential to be sanctioned, will be impacted in relation to their standard of living (protected by Article 27). Even with the Westminster commitment to continue to pay the "child element" of benefits to "sanctioned" parents this does not go far enough to protect the rights and best interests of children in "sanctioned" families as removal of any income from household budgets will have a severe impact on children.

The proposed benefit cap has the potential to impact on the rights of children in larger families to an adequate standard of living.

The proposal to introduce Universal Credit as a new single means-tested support for working age people who are in and out of work also has potential to infringe on the rights of children and young people, particularly in relation to their Article 26 rights to social security and Article 27 rights to an adequate standard of living. Again, I welcomed the flexibilities negotiated by the Minister regarding splitting payments between joint claimants and the frequency of payments but remain concerned that the Department are working to establish criteria as to when claimants will be able to avail of these flexibilities. I am already on record as stating that the choice of payment options should lie with the claimant who should be able to simply opt in to either split payments or more frequent payments without having to satisfy any additional criteria. Having to satisfy additional criteria in order to avail of these flexibilities could lead to further stigmatisation of claimants and if these criteria cannot be met by a particular family the default payment cycle of monthly payments or payments being made to the primary claimant could result in budgeting difficulties and the associated impact on standards of living for the children of the family.

Article 26, the right to social security, has the potential to be infringed by the abolition of the Social Fund. The Social Fund and the availability of crisis funding has long been a mechanism which has assisted families in urgent hardship. If the Social Fund is not replaced by a "ring fenced alternative" which is protected in the budget, as an emergency fund for families, it will result in a failure to provide for the best interests of the child in accordance with Article 3 and is likely to result in the breach of other articles including the right to enjoy the highest attainable standard of health under Article 24, and the Article 27 right to an adequate standard of living. I remain deeply concerned that in the proposals, claimants who seek emergency funding and who have a certain level of debt or rental arrears will be refused assistance. It is these families who are already at

breaking point who will be most in need of emergency crisis funding.

We have already discussed children with disabilities above but in particular I have concerns that the change from Disability Living Allowance (DLA) to Personal Independence Payments (PIP) will impact negatively on the rights of both disabled children and children of disabled parents. There are currently about 5,000 young people aged 16-20 receiving DLA. The mobility element of DLA is vital for the additional transport costs many young disabled people incur. The removal of this could result in the reduction of a young person's independence if changes are implemented as currently envisaged and could result in a breach of Article 23 which ensures that children with disabilities have the right to live a full and decent life in conditions to promote dignity and independence.

One of the starkest examples of a prospective impact on the rights of children with disabilities is the proposal to change the eligibility criteria for qualification for contributory Youth Employment and Support Allowance. Currently there is a special arrangement whereby certain young people with long term significant or severe disabilities can qualify for Youth ESA without having to satisfy the usual National Insurance contributions which requires other claimants to have paid a minimum amount of contributions to qualify. If the proposed changes are confirmed then young people with severe disabilities will only be entitled to ESA if they satisfy the contribution conditions. This is of particular importance to certain groups of disabled young people and failing to protect the rights of these young people may infringe Article 23 as set out in the paragraph above.

In conclusion, in order to ensure that this bill and subsequent regulations are compliant with children's rights they must be measured against the framework for the UNCRC. Only if the best interests of children and young people are a paramount consideration in the minds of your Committee and the Department will this Bill and the regulations will the ethos of the UNCRC and the rights of children be upheld. We have

pointed to a number of matters which have potential to breach the specific rights of children as currently drafted. This Committee, the DSD Committee, the Assembly and the Department have an opportunity at this juncture and at the time of laying the regulations to ensure that they are assessed against the international standards to ensure their compliance with not only human rights generally but children's rights specifically. To fail to do so is to fail to uphold the rights of some of the most vulnerable members of our society.

Patricia Lewsley-Mooney

12th December 2012