

**ADVICE OF
THE COMMISSIONER FOR CHILDREN AND
YOUNG PEOPLE NORTHERN IRELAND
TO THE CIVIL AND FAMILY JUSTICE REVIEW**

October 2016

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Introduction

The office of the Commissioner for Children and Young People is a statutory body established by The Commissioner for Children and Young People (NI) Order, 2003. The principal aim of the Commissioner in exercising her functions is to safeguard and promote the rights and best interests of children and young persons. In determining whether, and, if so, how to exercise her functions, in relation to any particular child or young person the Commissioner's paramount consideration shall be the rights of the child or young person; and the Commissioner shall have regard in particular to the ascertainable wishes and feelings of the child or young person considered in the light of his age and understanding. In her dealings with anybody or person the Commissioner shall at all times have regard to any statutory provision or rule of law which authorises or requires that body or person to act in a particular manner or authorises or requires that body or person to have regard to any consideration other than the rights of the child. In determining whether and if so, how, to exercise her functions the Commissioner shall have regard to the importance of the role of parents in the upbringing and development of their children and any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

General Comments

NICCY welcomes the review of family and civil justice in Northern Ireland, particularly in light of the numerous recommendations which will have a significant and in most cases a positive impact upon children and young people and their experiences when they or their families are involved in the Court system.

In responding to the Review of Civil and Family Justice led by Lord Justice Gillen the Commissioner understands that the purpose of the Review is to look fundamentally at current procedures for the administration of civil and family justice with a view to:

- Improving access to justice;
- Achieving better outcomes for court users, particularly for children and young people;
- Creating a more responsive and proportionate system; and
- Making better use of available resources, including through the use of new technologies and greater opportunities for digital working.

The views of the Commissioner have been informed by her interaction with children and young people in her work and are underpinned by views gathered directly from young people with experience in relation to the issues discussed. If no comment is made on a particular section of the draft report on family justice this is because the area is one outside of the remit of the Commissioner.

United Nations Convention on the Rights of the Child

The UK government ratified the UNCRC in 1991 and therefore made a commitment to realise the rights of children and young people as outlined in the convention. In considering whether to take forward recommendations made in the review, we would remind the decision makers of their obligations under the United Nations Convention on the Rights of the Child. Of particular relevance are the following articles:

Article 3:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”

The UN Committee on the Rights of the Child expanded upon Article 3 in its General Comment No. 14 ‘The Right of the Child to have his or her best interests taken as a primary consideration’.¹ The Committee underlined that that the child’s best interests is a threefold concept:

“A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 32, paragraph 1 (UNCRC) creates an intrinsic obligation for States, is directly applicable (self executing) and can be invoked before a court.

¹ CRC/C/GC/14, 2013

A fundamental, interpretative legal principle: *If a legal provision is open to more than one interpretation, the interpretation which more effectively services the child’s best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.*

A rule of procedure: *Whenever a decision is to be made that will effect a specific child, an identified group of children or children in general, the decision making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s best interests have been weighed against other considerations, be they broad issues of policy or individual cases.”*

The UN Committee on the Rights of the Child’s most recent Concluding Observations on the United Kingdom of Great Britain and Northern Ireland states: *“The Committee regrets that the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces”.*²

Article 4 the UNCRC is clear that all processes must be driven by the rights of children and young people

“States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention”

NICCY believes that this review provides an ideal opportunity to ensure that the child is at the centre of all relevant proceedings with their best interests as the paramount consideration. This includes the recognition of the importance of only separating children from their parents as a last resort and that such decision can only be made by *“competent authorities”* and subject to *“judicial review”* (**Article 9**)

² CRC/C/GBR/CO/5, 2016, para 26

Alongside Article 3 another of the general principles of the UNCRC is **Article 12** which addresses the voice of children and young people it states that

“State 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. For this Purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

The UN Committee on the Rights of the Child in its General Comment No.12 ‘The Right of the Child to be Heard’³ emphasised that Article 12 applies to “*all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children’s education, health, environment, living conditions, or protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.*”⁴

Article 16 of the UNCRC is critical for the purposes of this review which concerns a child’s right to privacy it states that;

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

It is clear that a child’s right to privacy can only be breached in the most extreme of circumstances and only when the merits of individual cases have been fully considered. The Commissioner considers that this article must be at the forefront of all considerations during this Review.

³ CRC/C/GC/12, 2009

⁴ Para 32

It is these principles alongside the UNCRC as whole which must underpin any reform of the current family and civil justice system in Northern Ireland to ensure that the most vulnerable members of society are protected.

Comments on the Recommendations

The International Context

NICCY recognises that where areas of good practice are identified these should be considered in relation to how they could be adapted to improve the current system in Northern Ireland whilst ensuring that the particular circumstances of jurisdiction are taken into account. **(FJ1-6)**

A Single Tier System

Any simplification of the family justice system is welcomed as it should enable children and young people to better understand the proceedings that they are subject to. Therefore, the Commissioner supports the recommendation for a single family court. The recommendation for careful consideration of the location of venues is welcomed. It should be ensured that all those living in Northern Ireland whether in a rural area or in a city have true access to justice through availability of a court venue within a reasonable and affordable travelling distance. **(FJ7-8)**

Private Law Children Order Proceedings

Family conflict and change is often traumatic for those involved. At all times when consideration is being given to the children their best interests should be the paramount consideration. Every effort should be made to ensure that the child's right to maintain contact with both parents is upheld unless it is deemed not in their best interests to do so.

Decisions concerning residence and contact for a child can be fraught with emotion for the whole family. Unnecessary delays in obtaining the views or resolving the matter by the Court can exacerbate the trauma being experienced by a child for whom stability is vital. Therefore all efforts should be made to make the process as efficient and effective as possible whilst acknowledging the challenges of balancing the importance of ensuring the voice of all those involved is heard with the need to speed up the process.

The Commissioner strongly supports the recommendation for setting up a “one stop shop” **(FJ9)** process at first directions hearing and believes that adequate resourcing is critical to the success of such a service. The current delay in relation to access to a Court Children’s Officer is unacceptable and this recommendation would go a long way to addressing this delay and the subsequent delays caused by referrals to other professionals not being made in a timely manner.

The Commissioner welcomes the suggestion that this appropriately links in with the emerging and promising family support and early intervention work being undertaken as part of implementation of Families Matter and Early Intervention Transformation Programme.

The Commissioner supports the recommendation for a triage system to prioritise cases where contact has broken down, with the introduction of appropriate arrangements by the Legal Services Commission to facilitate this process **(FJ15)**. However NICCY suggests that this should also be extended to cases where no contact at all has taken place since family breakdown occurred and restoring contact in these cases should be a priority, if deemed to be in the best interests of the children concerned.

The Commissioner welcomes the recommendations in relation to judicial consistency of approach and joint training for Family Judges **(FJ23-24)**. We would draw attention to UN Committee on the Rights of the Child General Comment No. 5 ‘General Measures of Implementation’⁵ in particular the following section:

*53. “The Committee emphasises States’ obligation to develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and **members of the judiciary** - and for all those working with and for children.....*

Training needs to be systematic and ongoing - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels”.

⁵ CRC/GC/2003/5, 2003

Breaches of Contact Orders can be distressing and confusing for the children concerned and in these circumstances the Courts need to be able to act decisively and swiftly.

The Commissioner is supportive of the recommendation for an emphasis on swift priority driven references back to court when breaches are observed (**FJ29**) and of the use of “stop contact “ notices to be served before contact is stopped (**FJ25**) (except in cases of genuine child welfare concerns).

The Commissioner can not envisage a circumstance where criminalising parents who breach contact orders can be in the best interests of their child (**FJ27**), but believes the option of support (in the most appropriate non-coercive format) for those who breach orders should be explored. There is also merit in considering the option of offering additional support for those parents at risk of breaching an order as a way of preventing breach.

We would urge that regard be had to the Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland:

*“Take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children”.*⁶

Resolutions Outside Court

The Commissioner believes that it is more appropriate for most family conflict situations where residence and contact become issues to be resolved outside of the court process. Court proceedings can lead to polarized positions by parents and the adversarial nature of the court process can often serve to entrench positions and add to the difficulties experienced by families. Court proceedings should be a last resort when all other measures have been exhausted or for those cases deemed to be of such a serious nature or so complex as to require the Court to intervene.

⁶ CRC/C/GBR/CO/5, 2016, Para 55(b)

The Commissioner agrees with the recommendations in this chapter (**FJ31-36**) but would stress that mediators should have training in children's rights and child protection and not just experience in this area (**FJ33**). It is imperative that adequate resources are secured to ensure the success of a more widely available mediation system.

The Commissioner agrees that an early education and support programme prior to the issuing of proceedings is the preferred option and agrees with the suggested exemptions (**FJ34 & 36**).

Divorce Proceedings in Northern Ireland

The Commissioner makes no comment on the recommendations for divorce proceedings (**FJ37-46**) other than to state that she agrees that a discretion for the adjudicator to insist on an oral hearing where the Statement of Arrangements for Children caused him or her to consider an oral hearing to be in their best interests is a necessary safeguard.

The Public Law System

The separation of a child from his or her family is one of the most extreme measures the state can take. It is incumbent on the Court to have the child's best interests as the paramount consideration in any such proceedings. When considering alternative arrangements for the child the court must be satisfied that these arrangements will improve the outcomes for the child. As discussed earlier the Article 9 of the UNCRC provides a framework for such provision. It states that:

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

NICCY agrees with the recommendations in this chapter which relate to case management **(FJ66-71)**, court orders **(FJ72 & 73)** and appeals **(FJ74)**. The Commissioner is particularly in favour of the recommendations regarding non accidental injuries **(FJ75 & 76)** and would again caution that vigilance is taken to ensure that due process is not compromised to achieve a swift outcome.

The Commissioner notes the recommendation in relation to judgements **(FJ77)** provided that all necessary steps are taken to protect the privacy of the child by ensuring anonymity and avoid the risk of jigsaw identification. These steps must also be taken with regard to the provision of any audio recording of the hearing being made upon reasonable request, along with steps to ensure that distribution of any CD or recordings is closely controlled and monitored.

As mentioned above the work with children and families is a highly specialised area and NICCY is very supportive of mandatory training as outlined in all parts of recommendation **FJ78**. The UN Committee on the Rights of the Child in its General Comment no. 5 places a strong emphasis on the need for initial and on-going training of all those who engage with children and young people. The implementation of this recommendation in a way that has children’s rights at its core will be a most welcome development for children and young people involved in the Family Justice System.

The recommendation in relation to accreditation **(FJ85)** is particularly welcomed by NICCY and note that the recommendations in relation to experts and acknowledges the reasoning for limitations being placed upon expert evidence but would caution that this should not result in an inequality of arms between the parties.

The Commissioner believes that the recommendation **(FJ89)** with regard to the reintroduction of the Guardian ad litem after a freeing order is made should not be restricted to exceptional circumstances but should be considered in all cases where the best interests of the child would be served by doing so. Research confirms that children who were aged four or older at placement were about 13 times more likely to have a

disruption compared with those who were infants at placement.⁷ Children are inherently vulnerable, never more so than when being separated from their family. This vulnerability does not disappear once they have been freed for adoption and it is imperative that they receive all possible support to assist them through this process and to have their voice heard during this time

Secure Accommodation Orders

NICCY does not agree with the use of live links for substantive hearings in secure accommodation order cases. NICCY would once again draw attention to UNCRC Article 12 and the right of a child to be heard. We consider that the use of live links could diminish this right and negatively affect access to justice for children and young people in this forum.

With regard to recommendation **FJ92** concerning criteria to be drawn up concerning the use of live links NICCY would strongly recommend that this should be based on the principle of exceptional circumstances and that the criteria includes a clear definition and indication of when such circumstances might arise.

We would again draw attention to the Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland. In particular paragraph 53 – The Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex and the recommendation that the State party:

*(d) “Ensure that secure accommodation in Northern Ireland is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation”.*⁸

⁷ Beyond the Adoption Order: challenges, interventions and adoption disruption Research report Julie Selwyn, et al, Department of Education, 2014

⁸ CRC/C/GBR/CO/5, 2016, para 53(d)

Problem Solving Courts

The Commissioner is very much in favour of problem solving courts and fully supports the recommendations made (**FJ93-5**) and believes that the use of problem solving courts could address the issues currently experienced in relation to delay, which is adverse to the child's best interests. Such processes where properly resourced with skilled practitioners can serve to ensure that sustainable solutions are found to complex issues.

Child Abduction

The Commissioner agrees with the recommendations in relation to child abduction (**FJ96-105**) in particular that a protocol be drawn up as to how the voice of the child can effectively be considered in Hague Convention cases.

Paperless Courts

The Commissioner has no comment to make on paperless courts except that this should not be allowed to restrict the parties' ability to participate in proceedings.

The Voice of the Child and Vulnerable Adults

The Commissioner is gratified to see that full recognition to the requirements of Article 12 UNCRC has been given in this chapter. We see little need to repeat the compelling case made in this chapter that the Family Justice System can learn from and adapt good practice from the criminal justice systems particularly in the support given to child victims and witnesses. It is clear that when given the necessary support and environment children are more than able to participate in judicial proceeding in a way that ensures that their views are taken into account. Therefore where deemed appropriate (i.e. having taken into account the individual needs of the child) it is imperative that children and young people are:

“..... provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child either directly or through a representative or an appropriate body....” (Article 12 (2)UNCRC)

Therefore NICCY is strongly in favour of all court and legal practitioner and family judges receiving training in engaging with and interviewing children.

To reiterate NICCY strongly supports all recommendations (**FJ121-129**) made in this chapter and cautions that they can only be achieved with proper investment and commitment from all involved.

The Court Setting

NICCY agrees that the environment in which the formal aspect of the Family Justice System operates is critical to ensure the maximum participation of children and young people whilst protecting the integrity of the process. NICCY recognises that achieving this requires careful consideration and welcomes the recommendations made in this chapter. We agree, however, that this should be reviewed (**FJ130**) by the Family Justice Board at the earliest opportunity and with full consultation with parents and children and young people is feasible.

Open Justice

The Commissioner recognises that a justice system can only be effective when it secures the confidence of the whole community that it serves. However such considerations in family courts must not be allowed to outweigh the best interests of the child who is subject to the proceedings.

Evidence has been provided during the course of this Review which suggests that the perception of fathers being treated unequally with regard to applications for contact and residence is not well founded. Statistics (page 35 of the draft report) include an analysis of contact applications made in 2014 of which 68 were made by females and 248 by males.

- 9% were found in favour of a female
- 58% were found in favour of a male
- 32% were withdrawn, dismissed or struck out

Of the 68 female applicants:

- 29% were found in favour of the female applicant
- 35% were found in favour of the male respondent
- 1% resulted in no contact order being made but a joint residence order was made
- 34% were withdrawn, dismissed or struck out

Of the 248 male applicants:

- 65% were found in favour of the male applicant
- 4% were found in favour of the female respondent
- 32% were withdrawn, dismissed or struck out

These statistics indicate that there is a disconnect between perceptions and reality and we would encourage that this is addressed by ensuring that the public and media fully understand the reality of the Family Justice System and how decisions are made.

In discussions with the Chair of this Review the Commissioner expressed concerns with regards to the proposals to open the family courts to the media particularly the possible risks that such proposals will compromise the privacy of young people as outlined in Article 16 (see above) as well as diminishing the confidence of children and young people involved in the family court system. NICCY agreed prior to submitting this formal advice we would seek the views of young people who have had experience of the family justice system. NICCY worked with VOYPIC and NIGALA in obtaining the views of children and young people with regards the proposals in this chapter. The outcome of this work is contained in appendix 1.

The vast majority of young people reacted strongly stating that the media should not be allowed into family courts, stating the importance of privacy not just for the young people but also for the whole family.

Comments included:

“Absolutely no benefit... highly intrusive. The issues don’t affect the general public in any way – what’s the purpose of it? Why do people want to know?”

“It is private, how would they like their private business in the local papers”

Whilst some of the young people recognised there could be some benefit from limited media reporting, such as improvement in services and attitudes towards children and young people involved in such proceedings, they were very clear that this did not outweigh the consequences of having the privacy breached

“I think it should be published and discussed by the media so that people will better understand what happens to children and why the family court needs to be involved sometimes with families. I didn’t do anything wrong, it was the adults who didn’t look after me and my younger siblings safely”

The young people stated that they or their parents should be asked if they want the media to be present. There were concerns around jigsaw identification from the young people and they felt that they and their families could be identified (sometimes wrongly) from the information given and that peers were always trying to piece things together from information in the media. Such identification could lead to young people’s issues and problems being further exacerbated by having to deal with rumours, whilst trying to come to terms with the situation they are in.

Further comments from the young people included:

“I would be shocked and angry about finding something about me in the paper or online”

“I would not be comfortable with that. If I knew it was about me, other people close and not so close would also know it is about me. What would that mean for my future? Even though the article might not say my name it wouldn’t take long for people to figure it out”.

Additionally young people were particularly concerned about the idea of information being posted on social media, stating that this could stretch the life of a story as it gets passed from page to page:

“Social media..... I read it and teenagers believe what they see on Facebook and social media”.

“I would be worried in case I was identified or if my details were known. I would not want this to happen”.

With regard to allowing members of the public into the court room, some young people thought that admitting additional people to the courtroom would stop them feeling that they could speak freely:

“I don’t want other people to be there (in the family court) who don’t know me and my family because of their job working for the court. I wouldn’t want my friend to be there either, It was best that I went with my GAL and my solicitor to see the judge”.

“There should not be people in a situation who have nothing to do with that situation, especially as it is so serious it is in a court it is a very private thing”.

“I wouldn’t even want my friends there.... you would only need the people involved”.

The young people did recognise that it is sometimes in the public interests to report very serious cases of abuse such as Baby P but that this was the exception.

To re-iterate, the young people who we engaged with were clearly opposed to the courts being opened in this manner but should this proceed they have suggested some safeguards:

- Young people or children should give consent before any information about them is used in the media
- Journalists should be experienced and have knowledge of the potential trauma of what it is like for a young person to be involved in the family court system and what negative impact it can have on a young person if their identity is revealed either directly or inadvertently.
“They (the journalists) wouldn’t want their dirty washing out there.”
- Journalists should be bound by and held accountable to confidentiality agreements and restrictions in reporting
- There should be disciplinary consequences for journalists and media organisation if confidentiality is breached
- Judges should have training on the impact on the child of their identity being known
- Judges should monitor journalist’s reporting and it was suggested to allocate a specific judge to specific journalists so there can be better accountability.

They were also clear that the following information should not be allowed to be included in any reporting:

- *The area in which children live*
- *The school or clubs they go to*
- *Information about other family members*
- *Problems children had at school*
- *Information about their religion*
- *Any harm children had suffered*
- *What court the hearing is taking place in*

Young people were aware that journalists are already permitted in Family Courts and that this may continue. A comment on this was:

“If it was allowed it would be beyond appalling if families weren’t asked their views”

The Commissioner believes it is clear from this small scale engagement with children and young people that there are very strong views in relation to open justice and the presence of media in the courts.

NICCY Advice on Recommendations concerning Open Justice

NICCY is wholly against increased media reporting in family cases and is of the opinion that the best interests of children should come above any consideration of public confidence of adults in this regard. It is clear that the public confidence of children and young people would be significantly diminished if these recommendations were adopted. The Commissioner welcomes all suggestions of safeguards from the Review and the young people but does not believe that they will mitigate the concerns or the breaches of the rights of the children and young people involved. These are some of the most vulnerable young people in our community and the Commissioner does not accept that the case for these proposals is “compelling” or will result “accountable justice” and would urge that attention is paid to child’s rights implications of these recommendations.

The Commissioner would urge that regard be paid to the evidence already submitted to the review, conducted in other jurisdictions and in particular the following:

“Children fear exposure, they are afraid that personal, painful and humiliating information will get out and they will be embarrassed, ashamed and bullied at school, in neighbourhoods and communities”⁹

Further research by Dr Brophy in 2014 echoes that of the young people that NICCY and others have engaged with.

“They argue the family court is not a public court for good reason, that they have rights to privacy and dignity and that this move represents a failure of Parliament and the family justice system to consider their views, needs, experiences and long term welfare”.¹⁰

“Young people were unanimous about how a young person might feel, reading about their case in a newspaper; even if the child or young person’s name did not appear in the story, they would be deeply affected. They described feelings of anger, sadness and depression, embarrassment, shame, guilt and humiliation”.¹¹

“In a jurisdiction based exclusively on promoting the welfare of children, we should be concerned less with ensuring that the general public have a greater knowledge of how the family justice system operates, and more with ensuring that the welfare of the most vulnerable children is protected in an age of instant communication and social media”¹²

The Commissioner would also urge regard be had to previous instances of irresponsible and inaccurate reporting in the media of cases involving children and the difficulties in guarding against this once the media have been given permission to report. The case of *Re: L (A Child: Media Reporting)* [2011] EWHC B8 aptly illustrates the risks of irresponsible journalism as does *Re H (Freeing Orders: Publicity)* [2005] EWCA Civ 1325.

⁹ Dr Julia Brophy – The views of children and young people regarding media access to family courts 2010

¹⁰ P.53 of the 2014 study

¹¹ P. 32 of 2014 study

¹² Tom Wilson: Greater Transparency in Children Proceedings: A Note of Caution

Whilst the young people in the sample above identified that there should be disciplinary proceedings for journalists who do not report responsibly these by their very nature are reactive and cannot undo damage which has already been done by such reporting.

The NI Commissioner for Children and Young People is of the view that there are no sufficient safeguards which could be put in place to fully protect children, young people and their best interests against their information being placed in the public sphere. Additionally, NI is a small jurisdiction and therefore the jigsaw identification is much more of a risk that any other area in the British Isles.

These proposals cannot be pursued without a formal section 75 compliant consultation process being undertaken, one that engaged fully with children and young people.

Article 16 of the UNCRC is clear that children have the right of protection from interference with privacy, family and home. As is Article 3 that the best interests of the child must be a paramount consideration by all authorities including courts of law. Proceeding with these proposals will interfere with these and other rights.

The Commissioner believes strongly that the proposals contained in this chapter run contrary to the tone set by this review where the best interests of children are the paramount consideration. NICCY strongly recommends that these proposals are not pursued in proceedings that involve children and young people.

Young People's Experiences of the Family Justice System

When we consulted with young people they also expressed their views on their experiences of Court proceedings and were asked what would make being involved in proceedings easier. Young people felt that their voice should be heard and clearly had different experiences.

"I just know that they don't listen to me, they listen to my mum more. They say they listen to the child and young people more but they never really do".

"I do not want to speak to the judge, but I do think that you should be able to. It is better to be able to talk for yourself and get over your own views".

“I would have liked to have known more about court. I would have been less anxious and worried”.

“Basically I don’t talk to anyone about Court. It causes me anxiety so I stay out of it”.

“Felt like it was ok, nothing particularly hard as I was aware of all the information. I went to court to meet the Judge. Felt my view was listened to and mum said the same as the Judge spoke about or conversations during the final hearing”.

Various recommendations were made which from a young person’s point of view would improve their experience of the Family Court:

- No journalists unless permission is given from the young person or child involved
- Parents and young people should have the choice to speak to the judge
- There should be an informal meeting between all parties before the formal court proceedings
- Young people should view the court room beforehand
- Young people should also have the choice to sit in or out of the court room
- Young people should meet the judge before hand
- Young people should be able to sit close to the judge as the case is about them
- Young people should get a photo of their Counsel in advance

Conclusion

NICCY welcomes this review and endorses the majority of the recommendations and applauds the careful considerations given by the Review. However the Commissioner is deeply concerned that the rights of children and young people may be severely diluted with the implementation of some of the reviews recommendations, in particular those in relation to ‘Open Justice’.

We would urge that more consideration is given to the best interests of children and young people who come into contact with the family and civil justice system before final recommendations are taken forward.

Anonymity or Accountability?

1.0 Introduction

This report is intended to inform the advice that the Northern Ireland Commissioner for Children and Young People gives to the Lord Justice Gillen, as part of the ongoing Civil and Family Justice Review.

The aim of this consultation was to get the views of young people on the role of reporters within the Family Court, i.e., should the Family Court keep the same levels of access; is this access too much or should Family Courts be more open? During the course of the consultation, young people volunteered information on other issues pertaining to the Family Court.

Children and young people's participation in Family Court processes and procedures is by its nature stressful. Quite often the reason why they are there is of no fault of the child or young person but rather because of disputes between parents or because the child or young person is at risk of suffering harm in their parent's care.

General media access to the court is already accepted through legislation in England and Wales with the stated goal of increasing the openness and transparency, and hence accountability, of Family Courts.

“Public confidence in the justice system is a necessary and vital part of a democratic society. I want to ensure that reforms to the family courts system increase their accountability to the public.”¹³

Jack Straw, Secretary of State for Justice, (April, 2009)

The counter argument to this is that relaxing the restrictions on media reporting of family court cases could put the personal privacy and safety of vulnerable children and families at risk.

“The events discussed are painful, embarrassing and humiliating and the children and young people said their deeply personal details were the business of neither newspapers, nor the general public.”¹⁴

Dr Maggie Atkinson, Children's Commissioner for England, (2010)

¹³ <http://webarchive.nationalarchives.gov.uk/20130128112038/http://www.justice.gov.uk/news/newsrelease060409b.htm>

¹⁴ 'The views of children and young people regarding media access to family courts', Foreword, 2010

If the personal details of young people's lives – even anonymised - are potentially going to be available in the media, both mainstream and social, then their voice, thoughts and opinions on this issue should be included in the discussion.

2.0 Engagement

As the Northern Ireland Commissioner for Children and Young People, the United Nations Convention on the Rights of the Child¹⁵ underpins all the work of the office. Article 12¹⁶ of the UNCRC states all children have the right to a voice, which is both heard and taken seriously, in all decisions about them and their lives. In addition to this, Article 16¹⁷ states that all children have a right to have their privacy protected, unless there are things happening in their lives that places them in danger.

NICCY wanted to talk to young people who had experienced the Family Court processes. However, we were acutely aware of the sensitive nature of young people's involvement in Family Court, and therefore it was envisioned that it would be difficult to engage with large numbers of young people in exploring this issue.

To ensure that we weren't going to put any young person at risk, we took substantial advice from key organisations that who have extensive knowledge and experience of engaging directly with these young people and their families.

It was quickly agreed that it would not be good practice for NICCY staff to 'go in cold' and engage with young people on this issue but rather work in partnership with these organisations to ensure a familiar face is part of the engagement process.

With this in mind, NICCY worked closely with VOYPIC (Voice of Young People in Care) and NIGALA (Northern Ireland Guardian ad Litem Agency) to complete this programme of engagement.

¹⁵ [United Nations Convention on the Rights of the Child](#)

¹⁶ **Article 12** (respect for the views of the child): Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.

¹⁷ **Article 16** (right to privacy): Every child has the right to privacy. The law should protect the child's private, family and home life, including protecting children from unlawful attacks that harm their reputation.

3.0 Methodology

Through our partnerships with VOYPIC and NIGALA, a series of engagements were arranged with young people, both in group and individual settings.

The young people were informed that at present members of the public are not allowed to sit in on proceedings in the Family Court. Sometimes the Judge will allow people, journalists or newspaper reporters to attend hearings of family cases. These people are only allowed to report certain things and they are prevented from reporting any information that would enable the identification of a child or young person who had attended Family Court. For example, they can't mention a child or young person's name, address or school attended.

In both group and individual settings, a questionnaire (Appendix 1A) was used as the basis for facilitated discussion in garnering the thoughts, opinions and ideas of the young people. The questionnaire was informed by the Children's Commissioner for England's 2010 report on 'The views of children and young people regarding media access to family courts'¹⁸ and feedback from NIGALA and VOYPIC staff.

The discussions were facilitated jointly by NICCY and VOYPIC staff in the group setting, and by Guardians ad Litem in the individual settings.

Guided by the questionnaire, the discussions allowed the facilitators to encourage and support young people to respond, to generate their ideas and to reflect about the practice.

It was emphasised to the young people that the facilitator was not looking for information about *why* they were involved in the Family Court but rather about their views on whether the media should have access to the Court, and on their own experience with regard to Family Court processes and procedures.

The young people were informed that their responses would remain confidential and any quotes in the final report would be anonymous.

The feedback below relates to this engagement with young people from a variety of backgrounds, experiences and locations.

¹⁸ 'The views of children and young people regarding media access to family courts'; March 2010, Dr Julia Brophy, The Oxford Centre for Family Law and Policy Department of Social Policy and Social Work, University of Oxford.

- Number of participants: 23
- Age range: 13-18
- Geographical range: From every Health Trust area in Northern Ireland
- Backgrounds: Young people involved in private and public law proceedings¹⁹

4.0 Feedback

4.1 Media in the courtroom

The vast majority of young people (18 out of 19 responses) reacted strongly about media being in the courtroom stating the importance of privacy, not just for the young people but also for the whole family:

- *“With a child and family- it is not just one person, there is the whole family and wider family to consider.”*

Young people felt that as a result of being in care “too many people” knew personal information about them as it is. Allowing media to report on their situation would only make this worse.

The young people were very vocal and virtually unanimous in agreeing that the media should not be allowed into the Family Court:

- “It is private and how would they like their private business in the local papers.”
- “No.... it should stay confidential.”
- “No, this is family stuff, personal; I don’t think they should be allowed in.”
- **“I would not appreciate it, my own personal stuff being shared with everyone. Things that happen in the family are private and personal.”**
- “Absolutely no benefit highly intrusive. The issues don’t affect the general public in any way – what’s the purpose of it? Why do people want to know?”

The young people said that reporters should not share any details in media that could expose them and their family and said that even by including minimal details there was a risk that this could be pieced together based on information shared in different media and that the reporting may be inaccurate:

- “The b*****s said exactly where I live.”

¹⁹ Public law cases are brought by local authorities include matters such as care orders, supervision orders and emergency protection orders. Private law cases are brought by private individuals, generally in connection with divorce or the parents’ separation.

- “They make it out worse than it actually is.”
- “The parents should be asked if the papers should be allowed in.”
- “Every paper tells the story in a different way.”
- “It would affect family relationships.”

Some young people suggested there could be some benefit of allowing limited media reporting, such as making schools or care services better, **however** they were very clear that this did not outweigh the consequences of having their privacy breached:

- “I think it should be published and discussed by the media so that people will better understand what happens to children and why the family court needs to be involved sometimes with families. I didn’t do anything wrong, it was the adults who didn’t look after me and my younger siblings safely.”
- “Maybe my mum would get more support. Depends on the situation. The case. Something that would impact your family.”

The young people stated that they (if they were an age where they can understand), or their parents, should be asked if they want the media to be present.

4.2 Jigsaw Identification

There was concern that people could be identified (sometimes wrongly) from information given and that peers were always trying to piece things together from information in the media. This could lead to more problems dealing with rumours for young people who have been in Family Courts.

They said they are trying to “get away from their past and don’t want it brought up again..”.

One young person said that if someone was to put details about them in the paper, it would bring up their previous experience of being in care which they are trying to get away from, stating “...it is not relevant to what is going on now in my life”.

Other comments included:

- “Does it not breach confidentiality? Who wants that information, it’s unnecessary information. If they did do this it would be disrespectful to the families especially personal information at a difficult time I wouldn’t tell close friends so why the general public people would figure out who it is.”
- “I would be shocked and angry about finding something about me in the paper or online.”
- “I would not be comfortable with that. If I knew it was about me, other people close and not so close would also know it is about me. What would that mean for my future? Even though the article might not say my name it wouldn’t take long for people to figure it out.”

In order to avoid any risk of identification the young people felt the following should not be allowed to be included in any media reporting:

- The area in which children live;
- The school or clubs they go to;
- Information about other family members;
- Problems children had at school;
- Information about their religion;
- Any harm children had suffered; and
- What court the hearing is taking place in.

4.3 Trusting the media

Although most (not all) young people interacted with the media they were not convinced of believing everything they read:

- “Yes I do read newspapers. I don’t believe them all the time.”
- “I don’t read them or watch the news. I have a question mark over if they would tell the truth.”
- “It is dodgy that they (*media*) are monetising (*benefitting financially*) from selling stories about people’s problems it is a breach of human rights and privacy.”

They recognised that there may be exceptional cases such as a very serious case of abuse e.g., Baby P saying that this should be reported but not other cases.

With regards to social media, the young people don’t want information posted on social media and are concerned that this could stretch the life of a story as it gets passed on from Facebook page to Facebook page:

- “Social media... I read it and teenagers believe what they see on Facebook and social media.”
- “I would really hate it.”
- “I don’t know. I think I would be really worried and upset that other people who know me or my family might be able to then work out that the story was about me, even if my name wasn’t used.”
- “I would be worried in case I was identified or if my details were known. I would not want this to happen.”

On allowing other members of the public into the court room, some young people thought that admitting additional people to the courtroom would inhibit them from speaking freely:

- “I don’t want other people to be there (in the family court) who don’t know me and my family because of their job working for the court. I wouldn’t want my friend to be there either. It was best that I went with my GAL and my solicitor to see the Judge.”
- “There should not be people in a situation who have nothing to do with that situation, especially as it is so serious it is in a court it is a very private thing.”
- “Wouldn’t like a random person in court. Would like a friend and if he was in court and knew the story and he could help me out.”
- “Ok with a friend but not with other people. The people involved in the court, the parties should decide who is allowed in, the parties should be asked their view about who is allowed in the court.”
- “I wouldn’t even want my friends there you would only need the people involved.”

4.4 General

Towards the end of the engagement, the young people were asked what would make being involved in court proceedings easier. Many suggestions were made.

With regard to pre-proceedings young people felt they should be able to speak the judge beforehand – be able to “have my voice heard”;

- “You can’t go in to give your own opinion.”
- “I just know that they don’t listen to me, they listen to my mum more. They say they listen to the child and young people more but they never really do.”
- “I do not want to speak to the judge but I do think that you should be able to. It is better to be able to talk for yourself and get over your own views.”

They also said that the courtroom should be small and private and that young people should be able to visit the family court beforehand to get familiar with:

- The layout;
- The judge involved;
- Who will be there.

They said people get to do this when they are going to a criminal court so the same should apply when going to family court.

- “I would have liked to have known more about court. I would have been less anxious and worried.”
- “I would like to speak to the Judge provided they were in normal clothes and not their robes. These are scary.”

Young people felt that there is no consistency in who they see – the judges could be different each time they attend court. There was a perception that some judges are harder on the young people than others making outcomes dependant on the personality of the judge.

They also felt that young people should be prepared for the realistic outcome – they felt that they sometimes go into court on false promises or overly optimistic expectations.

They said that some people aren't allowed to speak to the Judge or attend the proceedings because a decision has been made by the Guardian / social worker or solicitor without consultation with the young person. One young person said they were not allowed to go into the courtroom as it was felt that the experience could cause unnecessary stress and have a negative health impact. They argued that they were already under stress and that they should have been given a choice as to whether they wanted to attend or not.

The young people also has comments on the role / impact of their social workers saying that there should be better communication between all parties involved in the court case, e.g. between different social workers.

- “It would have been helpful if I had had decent social workers. I can't remember the number of social workers I have had in a year. Some have broken my trust and the rules of confidentiality.... They have not bothered to come out when they say they are coming out, they have said I have done things I haven't done and have pushed the story to one side. It has never been very clear what the court has been about nothing has been explained to me.”

Another young person highlighted the stress of going through the Family Court process:

- “Basically I don't talk to anyone about court. It causes me anxiety so I stay out of it.”

One young person told of a positive experience:

- “Felt like it was ok. Nothing particularly hard as I was aware of all the information. I went to court to meet the Judge. Felt my view was listened to and mum said the same as the Judge spoke about our conversations during the final hearing.”

5.0 Young people’s Recommendations

During the course of the facilitated discussions, various recommendations were made that would, from a young person’s point of view, improve their experience and the experiences of other young people as they go through Family Court proceedings:

1. There should be no journalists in Family Court unless permission is given from the young person or child involved;
2. Parents and young people should have the choice to speak to the Judges;
3. There should be an ‘informal’ meeting between all parties before the formal court proceedings;
4. Young people should view the court room before hand;
5. Young people should also have the choice to sit in or sit out of the court room;
6. Young people should meet the judge before hand;
7. Young people should be able to sit close to the Judge as the case is about them;
8. Young people should get a photo of their Counsel in advance; and
9. Wi-Fi should be available for the waiting room.

6.0 Safeguards:

There was a realistic awareness from young people that journalists are already permitted into Family Court and this may be continued after the Review.

- “If it was allowed, it would be beyond appalling if families weren’t asked their views.”

The young people were strong in their opinions of what should happen if journalists are to be allowed into Family Courts, suggesting the following safeguards be in put place:

1. Young people or children involved should give consent before any information about them is used in the media;
2. Journalists should be experienced/have knowledge of the potential trauma of what’s it like for a young person to be involved in the Family Court system and what negative impact it can have on a young person if their identity is revealed either directly or inadvertently;
 - “They (the journalists) wouldn’t want *their* dirty washing out there...”
3. Journalists should be bound by, and held accountable to, confidentiality agreements and restrictions in reporting;

4. There should be disciplinary consequences for journalists and media organisations if confidentiality is breached.

Also:

5. Judges should have training on the impact on the child of their identity being known;
6. Judges should monitor journalist's reporting and it was suggested to allocate a specific judge to specific journalists so there can be better accountability.

September 2016

**APPENDIX 1A: C&YP ENGAGEMENT: CIVIL FAMILY JUSTICE REVIEW -
CONSULTATION ON MEDIA ACCESS TO FAMILY COURT:**

- Q. Do you think the media should be able to sit in on family courts?**
- Q. What types of things do you think newspapers and social media are allowed to report about cases in family courts? E.g.:**
- The area in which children live/lived
 - The school and clubs they go to
 - Information about other family members
 - Problems children had at school
 - Information about their religion
 - Any harm children had suffered
 - Information about their parents' problems
 - Information about the conditions in their home
 - What court the hearing is taking place in
- Q. Would you want the media to be able to publish more information about what goes on in court than they are able to do now?**
- Q. Should judges or magistrates ask any children and young people involved in the case before they decide whether to allow a reporter to sit in?**
- Q. Should reporters be allowed to read reports by social workers, children's guardians and family court advisers before they write a story?**
- Q. Do young people read newspapers and do they trust newspapers to tell the truth?**
- Q. All reporting on court cases involving children and young people shouldn't give their names but what would you think if you read something on social media or saw something in the news that you knew was about you?**
- Q. If the public was allowed into court it would mean that you could have a friend there with you but it could also mean that other people you may or may not know could be in court. How would you feel about that?**
- General:**
- Q. If you have been involved in court proceedings what would have made it easier for you?**