



Memorandum of Understanding between the British and Irish Network of Ombudsman and Children's Commissioners (BINOCC)

The purpose of this Memorandum of Understanding

This Memorandum of Understanding (MOU) sets out the UK Commissioners' and Republic of Ireland Ombudsman's intentions as to how they wish their offices to work together for the benefit of children and young people throughout the jurisdictions.

Statement of Shared Principles

The British and Irish Network of Ombudsman and Children's Commissioners (BINOCC) links the 4 United Kingdom Commissioners and the Ombudsman for Children in the Republic of Ireland to promote and enable shared learning throughout the jurisdictions and for the discussion of issues of mutual concern which may affect the rights of children and young people.

The Commissioners and Ombudsman, via the BINOCC network, have agreed a number of shared principles which guide how each of the offices will work together. These are:

- to always place the interests of the child first and foremost;
- to listen to the views of children and young people and promote the participation of children and young people in decision making;
- to communicate in an open, transparent and timely manner across the jurisdictions;
- to encourage and promote the full implementation of the United Nations Convention on the Rights of the Child (UNCRC);
- to collectively advocate for children's rights and best interests in each of the jurisdictions;
- to work in partnership and collaboration;
- to influence and hold Governments to account for children and young people; and
- to share information, approaches and strategies for the benefit of children and young people.

The Importance and Power of Working Together as Children’s Commissioners and Ombudsman

The principle of working together provides a strong, collective weight both in Westminster and throughout the devolved administrations in Scotland, Wales and Northern Ireland. In addition, mutual support can also be provided between the UK Commissioners and the Ombudsman for Children in the Republic of Ireland, including through possible cross-border work. Working collaboratively, and in partnership on mutually concerning issues, can develop expertise within each jurisdiction, whilst also allowing for stronger positions and cases to be developed.

Working collaboratively engages staff at all levels and promotes the sharing of best practice and learning. It also provides the opportunity to benchmark policies, services and legislation for children and young people across the United Kingdom and the Republic of Ireland.

It is recognised that there is often a need to respond to government activity quickly, although it is agreed that each Commissioner/Ombudsman holds responsibility for matters within their own jurisdiction. In so doing, it is important that each office acknowledges the need for flexibility and where necessary, in trusting each other’s judgement.

There is a recognition that within the UK the links between each jurisdiction and between the jurisdictions and Westminster vary. However, it is agreed that BINOCC, as a forum for the UK Children’s Commissioners as well as the full BINOCC membership, provides a beneficial overarching group which can make representations to government.

The Respective Powers and Remit of the Children’s Commissioners and Ombudsman

There exist many issues of common concern and their significance varies across the five jurisdictions. These issues are played out against a backdrop of different histories, laws and cultures. They are particularly important and the variation of issues is increasing as devolved legislative and governmental bodies grow in strength and confidence within the UK particularly. Where there are variations in law, policy and practice, this can be interpreted negatively where children in some jurisdictions appear to be faring worse than those in others. However, there remains a unique strength in diversity. Decisions taken or actions implemented in one jurisdiction can provide a spur to action within the others. This and the communication between and amongst Commissioners and the Ombudsman allows for a wealthy exchange of information and will realise benefits to the organisations and children and young people.

Issues relating to the devolution settlement within the UK

Each Commissioner in the UK has been accorded varying degrees of independence within its establishing legislation, with differing powers across the jurisdictions. In addition, the Children’s Commissioner for England has a UK-wide remit regarding non-devolved issues. The UK Commissioners will undertake to communicate openly where there is a matter in a

jurisdiction which includes non-devolved issues. This will be approached through a principle of liaison and negotiation between the Commissioners and their respective offices.

The UK Commissioners acknowledge the importance of maintaining a common understanding regarding non-devolved issues and, in so doing, take a transparent and co-operative approach whereby each Commissioner is able to promote and protect all the rights of children within their respective jurisdiction, regardless of the subject matter.

Appendix 1 outlines in further detail the comparative functions and powers of each of the Commissioners/Ombudsman.

Underlying Principles

The United Nations Convention on the Rights of the Child (UNCRC) underpins our shared approach to developing and advocating our work across the UK and the Republic of Ireland. BINOCC acknowledge the UNCRC as providing the principled framework for each office's individual and shared work and will take a rights based approach in this. There is a shared recognition that the UNCRC is a universal convention that sets out standards that go beyond geographical boundaries, different jurisdictions or separate systems.

However, BINOCC will always strive to recognise the impact of jurisdictions and offices and will always make other colleagues aware of actions taken and any possible implications before they are made public.

Working Relationships

Wherever possible, colleagues from the different offices will work jointly on matters of common concern that require the attention of the Commissioners/Ombudsman. The intention shall always be to raise matters of common concern in a planned and timely fashion.

The offices will be proactive in informing other offices with regards to work and relationships with Government Departments and other organisations that have a remit over different jurisdictions. This will be supported by regular, on-going contact and open exchanges of information between the offices. This approach will include planning for and responses to Government(s) consultation processes. It is important that the different functions of the organisations work collectively across the jurisdictions and that there is a principle of planning and working across functions.

There may be occasions when offices may wish to reply to a policy proposal or external communication opportunity that is unforeseen. In such instances, the Commissioners/Ombudsman will endeavor to base any policy positions on an extension of existing positions and/or evidence held by one or more office.

The underlying principle for all communication about non-devolved matters is that where possible, agreement should be sought between the jurisdictions that the communication will impact upon, before it is issued. Where communication cannot be sought or reached,

the jurisdiction issuing the communication will make aware the other jurisdictions upon whom it may impact.

Shared Focus

Staff at all levels in each office will take forward such issues/matters within their respective authority and remit and deliver against agreed objectives. Operational matters should always be agreed or resolved at the relevant operational level. If there are areas of non-agreement, matters must be raised with the Chief Executive Officers/Chief Officers in the first instance, who may raise with the Commissioners/Ombudsman as appropriate.

Commissioners/Ombudsman will also investigate options for shared learning and development for staff throughout the BINOCC offices.

Organisation of Meetings

Commissioners/Ombudsman will meet on a quarterly basis throughout each business year. Meetings will alternate within each jurisdiction, with the host jurisdiction taking responsibility for the administration arrangements. Use of teleconference facilities may also be available for one or more of the meetings should the Commissioners/Ombudsman decide. Chief Executive Officers will also attend these meetings as requested. Other functional Senior Managers may be requested to attend as and when required.

There will be a need for functional and project joint working across the offices and teams. The Commissioners and Ombudsman will expect their offices to collaborate and meet as appropriate to progress areas of mutual interest and concern. The working relationships will be characterised by regular, on-going contact and open exchange of information between the organisations. On matters of joint collaboration the Commissioners or CEOs will agree the lead responsibility and identify the relevant staff to be involved.

Staff will liaise as matters of common interest, requiring co-operation and communication, arise. Such matters might include, but are not restricted to:

- joint working where this is lawful under the legislation and where this will result in the best use of resources;
- joint training in order to make optimum use of training sessions that would benefit more than one of the organisations concerned and would result in best use of resources;
- the sharing of information about trends, data, policy and initiatives which relate to the shared aim of ensuring that children and young people are provided with high quality services;

- the pro-active sharing of electronic copies of reports that may be of relevance ahead of the publication date under embargo;
- the sharing of concerns expressed which may be of relevance to any of the Commissioners/Ombudsman;
- identification of matters that might lead to joint action;
- consultation in relation to guidance or reports produced by one Commissioner/Ombudsman that refers to the responsibilities or functions of another one;
- co-operation in disseminating information about good practice.

There will be the need for people to work collectively across jurisdictions and functions to develop common positions and responses. In relation to external communications there will need to be positive joint working between the policy and communications functions. Each organisation will work from a principle of assisting the others with any request to the extent that it is reasonably practicable to do so.

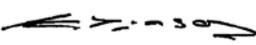
Each organisation will pro-actively distribute to the others (under embargo) media releases.

Each organisation will pro-actively share media statements which make reference to any of the other organisations as they are being drafted to ensure the accuracy of the statement.

Each organisation will ensure that members of staff are aware of the content of this Memorandum and the principles for joint working.

Status of Memorandum of Understanding

This Memorandum of Understanding is intended to provide a framework for the interaction between the members of BINOCC and is not intended to create any legal obligations between them. This Memorandum of Understanding between the Children's Commissioners and Ombudsmen will be reviewed annually by the Chief Executive Officers or Lead Officers.

<p>Name: Anne Longfield Position: Children's Commissioner for England</p> <p>Signature: </p> <p>Date: 13/04/16</p>	<p>Name: Dr. Niall Muldoon Position: Ombudsman for Children Ireland</p> <p>Signature: </p> <p>Date: 18/4/2016</p>
<p>Name: Koulla Yiasouma Position: Northern Ireland Commissioner for Children & Young People</p> <p>Signature: </p> <p>Date: 18/04/16</p>	<p>Name: Tam Baillie Position: Children and Young People's Commissioner Scotland</p> <p>Signature: </p> <p>Date: 15/04/2016</p>
<p>Name: Professor Sally Holland Position: Children's Commissioner for Wales</p> <p>Signature: </p> <p>Date: 18/04/16</p>	

Appendix 1

Children's Commissioners in the UK: a general overview of respective functions and powers

Northern Ireland	Scotland	Wales	England	Ireland
Name of office				
Commissioner for Children and Young People for Northern Ireland (NICCY)	Children and Young People's Commissioner Scotland	Children's Commissioner for Wales (CCfW)	Children's Commissioner for England / Office of the Children's Commissioner	Ombudsman for Children's Office
Legal instrument				
Northern Ireland Act 2000; Commissioner for Children and Young People (Northern Ireland) Order 2003	Commissioner for Children and Young People (Scotland) Act 2003	Care Standards Act 2000; Children's Commissioner for Wales Act 2001	Children Act 2004	Ombudsman for Children Act 2002
Classification				
NDPB	Royal Appointee	Corporate Sole	Corporation Sole (administered as a NDPB)	Independent statutory body accountable directly to the Oireachtas (Parliament)

Northern Ireland	Scotland	Wales	England	Ireland
Remit				
Northern Ireland except for non-devolved matters	Scotland, except for non-devolved matters	Wales, except for non-devolved matters – although has a limited power to consider any matter affecting children’s rights & welfare in Wales.	England, non-devolved matters in Wales, Scotland and Northern Ireland	The Republic of Ireland
Ages of C/YP covered by CC and Ombudsman function				
Everyone in Northern Ireland up to the age of 18 years and those up to 21 who have been “looked after” by a local authority and those up to 21 who are defined as disabled under the Disability Discrimination Act 1995.	Everyone in Scotland up to the age of 18 years, and those up to 21 years who have been “looked after” by a local authority.	Everyone in Wales up to the age of 18 years, and those over 18 who have been in care.	Everyone in England up to age of 18 and those under 21 who were looked after by a local authority after the age of 16 or have a learning disability.	Everyone in Ireland under the age of 18.

Northern Ireland	Scotland	Wales	England	Ireland
Functions and powers				
<p>Promote and safeguard child rights and best interests.</p> <p>Must have regard to role of parents, and relevant provisions of UNCRC.</p> <p>Keep effectiveness of law, practice & services under review, relating to child rights & welfare.</p> <p>Advise SoS, Executive Committee of Assembly & relevant authority on rights & best interests of children.</p> <p>Involve children in work of the Commissioner.</p> <p>Undertake, commission or provide financial assistance for research.</p>	<p>Promote and safeguard child rights.</p> <p>Must have regard to relevant provisions of UNCRC.</p> <p>Keep law, policy and practice under review (assess effectiveness).</p> <p>Promote best practice by service providers.</p> <p>Promote, commission, undertake and publish research on matters relating to rights.</p> <p>Must encourage involvement of children in Commissioner's work (prepare a strategy), especially those less able to speak for themselves.</p>	<p>Safeguard and promote the rights and welfare of children</p> <p>Review effect on children of functions of Assembly and devolved bodies (listed Schedule 2A) in Wales, including subordinate legislation, policy and practice.</p> <p>Review and monitor the arrangements which certain public bodies have in place to safeguard and promote the rights of children in respect of complaints, advocacy and whistle blowing arrangements and provide children with advice and support</p> <p>Conduct examinations in respect of individual children's services or the effect on a child of the exercise of certain organisations functions</p>	<p>Promote awareness of the views and interests of children.</p> <p>Encourage all those whose actions and decisions affect children to take account of their views and interests.</p> <p>Advise SoS on the views and interests of children.</p> <p>Consider or research any matter relating to the views and interests of children, including complaints procedures.</p> <p>Is to be concerned in particular with 5 outcomes in carrying out his general function.</p>	<p>Promote the rights and welfare of children</p> <p>Investigate complaints against public bodies, schools and hospitals</p> <p>Encourage public bodies, schools and hospitals to develop policies, practices and procedures designed to promote the rights and welfare of children</p> <p>Highlight issues that are of concern to children</p> <p>Promote awareness of the UNCRC</p> <p>Establish structures to consult regularly with groups of children for the purposes of carrying out the OCO's</p>

Northern Ireland	Scotland	Wales	England	Ireland
Functions and powers (cont/d)				
<p>Issue best practice guidance on any matter concerning rights & best interests of children.</p> <p>Make representations & recommendations to anybody about any matter concerning rights/interests.</p> <p>Review advocacy, complaint, inspection and whistle blowing arrangements.</p> <p>Assist with complaints.</p> <p>Bring, intervene in or assist in legal proceedings where appropriate.</p>	<p>Encourage all parties to take views of children into account.</p> <p>Power to investigate any service provider as to whether, by what means and to what extent it has regard to the rights, interests and views of children; power to compel documents and witnesses. Includes cases of individual children, and is limited to devolved matters.</p>	<p>Consider and make representations to the Assembly about any matter affecting rights and welfare of children in Wales.</p> <p>Power to require information and documents when reviewing & monitoring arrangements above, and also in determining whether a report's recommendations have been complied with.</p> <p>Assist a child in making a complaint or representation, including financial assistance in respect of proceedings related to listed providers of children's services.</p>	<p>Must involve children in his work, especially those who are less able to speak for themselves.</p> <p>Must have regard to relevant provisions of UNCRC, when considering what constitutes children's interests.</p> <p>Power to follow up on what actions have been taken in response to recommendations made in any report the Commissioner publishes.</p>	<p>functions under the Act</p> <p>Undertake, promote or publish research into any matter relating to the rights and welfare of children</p> <p>Exchange information and cooperate with the Ombudsman for Children of other States.</p> <p>Advise Government on any matter relating to the rights and welfare of children, including the probable effect of draft legislation affecting children</p> <p>Monitor and review the operation of the Ombudsman for Children Act and, if necessary, make recommendations for amending the Act</p>