

Response to the Northern Ireland Office's (NIO's) Consultation Paper Addressing the Legacy of Northern Ireland's Past

October 2018

Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate 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. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or experience of being in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the current consultation being carried out by the Northern Ireland Office (NIO) on 'Addressing the Legacy of Northern Ireland's Past'. The setting up of institutions agreed in the Stormont House Agreement to address different aspects of the legacy of the past is extremely overdue. We welcome the stated intention in the consultation document to legislate for the setting up of the Historical Investigations Unit, the Independent Commission on Information Retrieval, the Oral History Archive and the Implementation and Reconciliation Group. NICCY agrees that a clearer focus and impetus is required to address the legacy of the past. We do not wish to make comments on the specific proposals outlined in the consultation document in detail, but rather wish to alert you to the need to ensure that the role, experiences and views of children and young people are adequately reflected in the mechanisms established to deal with the legacy of Northern

Ireland's past. The current consultation is very adult focused and in our view does not adequately reflect the realities of children and young people who are living with the legacy of the past and who may be suffering the impacts of transgenerational trauma as a result of the conflict in Northern Ireland.

The Foreword to the consultation document by the Secretary of State states that,

“Now is the time for everyone with an interest in addressing Northern Ireland's past to have their say.”¹

However, neither children or young people are mentioned in the consultation document and the focus and membership of, as well as the time scales associated with the Historical Investigations Unit, the Independent Commission on Information Retrieval, the Oral History Archive and the Implementation and Reconciliation Group preclude the involvement of children and young people. It is NICCY's view that the omission of children and young people from the proposals contained in the consultation document needs to be urgently rectified if we are to progress inclusive mechanisms to address the legacy of Northern Ireland's past and to acknowledge the impact that the past continues to have on children and young people growing up in Northern Ireland today.

The Impact of the Conflict on Children and Young People

Twenty four years on from the ceasefires of 1994 and twenty years after the Good Friday/Belfast Peace Agreement, the children and young people in Northern Ireland today have been born and grown up in a time of relative peace and stability. Despite never having lived during the 'conflict' per se, the impact of the 'Troubles' in Northern Ireland on children and young people is still heavily felt. Segregation and community division continue to be a part of daily life for many children and young people in Northern Ireland and the legacy of the conflict impacts significantly on their lives. Research clearly shows increased levels of child poverty, childhood mental ill-health, educational inequalities and disabilities in the areas which have suffered most as a result of the Northern Ireland conflict. Moving forward to a more peaceful and stable future requires cognisance to be taken of the reality of children's lives and the impact of the legacy of the conflict on young people growing up in Northern Ireland, must be comprehensively addressed in any proposals aimed at dealing with Northern Ireland's past.

¹ Page 6, *Consultation Paper Addressing the Legacy of Northern Ireland's Past*, NIO, May 2018.

NICCY wishes at this juncture to remind the Government of its obligations to children suffering the legacy of the past by virtue of the UNCRC. Article 19 of the UNCRC states that,

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.

It is clear from this that the Government has international obligations to children which should involve protecting them from harm and ensuring that programmes are in place to support children who may be in danger of harm. NICCY recommends that the Government's obligations to children under the UNCRC inform its proposals for dealing with the legacy of the past and the fulfilment and realisation of children's rights are central to moving towards a positive future in Northern Ireland.

This is particularly stark when one considers that through engaging directly with children and young people, reports of activity by non-state forces have been confirmed to NICCY by young people across both communities who have stated that there is increasing recruitment to paramilitary-style organisations often through coercion or in payment for drug debts. Young people perceived to be involved in crime or anti-social behaviour continue to be assaulted and excluded from their communities. While NICCY accepts that significant progress has been made, violence remains a common feature of many of our communities, impacting on children and young people in an extremely detrimental way which must be addressed as we progress towards a more stable and peaceful society.

Segregation continues to be a part of daily life in accessing services with segregated living significantly impacting on how children and young people live their lives.² In Belfast, 98%

² O. Hargie, A. O'Donnell, and C. McMullan Constructions of Social Exclusion Among Young People From Interface Areas of Northern Ireland, Youth Society, (2011).

of public housing is segregated into Protestant or Catholic areas.³ Children are largely educated in separate schools, with only 7% of children attending integrated schools.⁴ There is a stark correlation between the areas most impacted upon by the conflict and those most economically and socially deprived with the highest levels of child poverty in Northern Ireland in the Foyle (34%), West Belfast (34%) and North Belfast (33%) constituencies.⁵ There is also a recognition that some areas have not benefitted from the end of the conflict in the same way as others and this is particularly true of those areas which are most affected by economic deprivation and/or underinvestment.⁶

It is also well recognised and documented that factors associated with the conflict impact severely on child and adolescent mental health in Northern Ireland⁷ yet there continues to be minimal recognition of the longer-term consequences of trans-generational trauma or of the impact on children of living in deeply-divided, sectarian communities. Research has found that of those in Northern Ireland suffering poor mental health, 15% of these are as a direct result of the Northern Ireland conflict.⁸ It also revealed the ongoing impact of trans-generational trauma and highlighted that children continue to suffer the consequences of poor mental health associated with conflict trauma and living under the ongoing threat of paramilitaries.

The media has also highlighted the trauma experienced by children who witness paramilitary style attacks.⁹ A report¹⁰ using figures obtained from the Northern Ireland Housing Executive (NIHE) showed that from 2012-2015 there were almost 1,300 cases of paramilitary intimidation which forced people out of their homes. This accounts for 70% of cases of intimidation from public housing over this period. This does not take into account incidents of forced paramilitary intimidation from other types of accommodation including private housing. The NI Executive Action Plan on 'Tackling Paramilitarism' in response to

³ *Ibid.*

⁴ www.deni.gov.uk/index/85-schools/10-types_of_school-nischools_pg/16-schools-integratedschools_pg.htm

⁵ <http://www.endchildpoverty.org.uk/poverty-in-your-area-2018/>

⁶ B. Murtagh, (2008). "New Spaces and Old in 'Post-conflict' Belfast." Divided Cities/Contested States Working Paper, No. 5. www.conflictincities.org/PDFs/WorkingPaper5_10.9.08.pdf

⁷ A Vision for a Comprehensive Child and Adolescent Mental Health Service – The Bamford Review November 2005.

⁸ Prepared for the Commission for Victims and Survivors by Ulster University, (2015), "Towards A Better Future: The Trans-generational Impact of the Troubles on Mental Health".

⁹ www.belfasttelegraph.co.uk/news/northern-ireland/teenager-shot-in-legs-surrendered-to-armedattackers-when-he-heard-his-terrified-little-sister-cry-31003876.html

¹⁰ Paramilitaries in Northern Ireland Forcing Hundreds from their Homes Each Year, Steven McCaffery, The Detail, 25th June 2015, <http://www.thedetail.tv/articles/paramilitaries-in-northern-ireland-forcing-hundreds-from-their-homes-each-year>.

the 'Fresh Start' 3 person panel on the disbandment of paramilitaries (report published June 2016) contains 43 recommendations.¹¹ Delivery on these is ongoing and NICCY is monitoring developments.

The Committee on the Rights of the Child in its examination of the UK Government's compliance with its obligations under the UNCRC, expressed its concern at the fact that in Northern Ireland, children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, and recruitment by such non-State actors.¹²

The Committee recommended that the Government,

*"Take immediate and effective measures to protect children from violence by non-State actors involved in paramilitary-style attacks and from recruitment by such actors into violent activities, including through measures relating to transitional and criminal justice."*¹³

Again, NICCY would urge the Government to ensure that its obligations to children and young people in Northern Ireland are adequately reflected in its current proposals for dealing with the legacy of Northern Ireland's past.

Educational attainment is vital to securing lifetime opportunities. Failing to achieve in education places children at a substantial disadvantage when it comes to accessing further education and employment. The Department of Education has identified groups of children who are at particular risk of underachieving in education, including those from disadvantaged backgrounds.¹⁴ The most deprived areas in Northern Ireland are those which have suffered worst as a result of the Northern Ireland conflict. Research¹⁵ has found that differentials in educational performance lie, to a degree of 80% or more, outside schools. It found that systemic educational improvement will require comprehensive, long-term responses to inequality.

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The inequalities facing children before they enter school tend to be less well publicised. We expect schools to increase achievement for all students, regardless of their particular circumstances. However, it is unreasonable to expect schools to completely eliminate any

¹¹ <https://www.justice-ni.gov.uk/articles/executive-programme-tackling-paramilitary-activity-and-organised-crime>

¹² Para 48(b), CRC/C/GBR/CO/5

¹³ Para 49(c), CRC/C/GBR/CO/5

¹⁴ Appendix 1, Priorities for Youth Consultation Document, Department of Education, consultation closed 10th December 2012.

¹⁵ "A Call to Action Educational Disadvantage and the Protestant Working Class", Issued by Dawn Purvis MLA and the Working Group on Educational disadvantage and the Protestant working class, March 2011.

large pre-existing inequalities soon after children first enter the education system, especially if those schools are underfunded and over stretched as many currently are.¹⁶

We accept that inequalities in education cannot be addressed through education alone, the policy context in Northern Ireland provides significant opportunities to address the issues which perpetuate educational inequalities on a cross-Departmental and cross-agency basis. There is an acknowledgement that co-operation is the best way to bring about positive change for children at a central Government level through the introduction of the Children's Services Co-operation Act 2015. The Act places a statutory obligation on all children's service providers to improve the well-being of children and young people in a manner which realises their rights under the UNCRC. Within the Act the term 'well-being' is defined through 8 parameters, one of which is learning and achieving, and another pertinent to note is respect for their rights and the promotion of good relations and equality of opportunity. The Act places obligations on Government to show that they are co-operating to improve the wellbeing of all children and young people in Northern Ireland.

NICCY wishes to see the emphasis on cooperation and partnership being translated to every aspect of the lives of all children and young people in Northern Ireland, not least in addressing the legacy of the past, which is still so pervasive in many of their lives.

Access to Information on the Northern Ireland Conflict

Despite the fact that Article 13 of the UNCRC places obligations on the Government to ensure that all children can seek, receive and impart information, children's knowledge of the Northern Ireland conflict and opportunities to discuss and make sense of 'the Troubles' are limited. Research has found that the three main influences on young people's knowledge and understanding of the past are their parents (52%), school (47%) and relatives (25%).¹⁷

While school is an important source of information for learning about the past, unless young people study GCSE History they will learn little specifically about the Troubles in school. Research highlights the views of children that stories passed down in families and communities, through grandparents and parents, or through murals, memorials and commemorations, act as continuous reminders of the past and of the impact of the conflict on "their community". Some felt that these stories, images and events serve as reminders

¹⁶ "Inequality at the Starting Gate" Valerie E. Lee and David T. Burkam, University of Michigan 2002

¹⁷ J. Bell, U. Hansson and N. McCaffery, Community Relations Council, (2010), "The Troubles Aren't History Yet" Young People's Understanding of the Past.

of what each “side” had done to “the other” and perpetuates violence within the younger generation.¹⁸ **In order to normalise our history and to move forward as a society emerging from conflict, it is vital that we can as a society arrive at a ‘shared narrative’ about the conflict which should be taught in schools to provide pupils with less subjective accounts of Northern Ireland’s past. This is important as children have a right to that information, they need to be equipped with the concepts and language to encourage them to make sense of our history and to become architects of a shared and better society.**

The Inclusion of Children and Young People in Northern Ireland Peace Agreements and Strategies

As with this consultation there has been very little focus in the Northern Ireland peace process to date on the impact of conflict on children and young people. Children are not mentioned in the Good Friday Agreement and young people are mentioned only once where the Agreement states,

“The participants particularly recognise that young people from areas affected by the troubles face particular difficulties and will support the development of special community-based initiatives based on international best practice”¹⁹

In light of the levels of child poverty, child and adolescent mental ill-health and educational inequality in those areas most impacted upon by the conflict which have yet to be properly addressed, it is difficult to see how there has been any genuine attempt to deliver upon this commitment.

The lack of emphasis of, children and young people in the context of dealing with the past can also be evidenced with reference to the Government’s ‘Together: Building A United Community’ Strategy.²⁰ With reference to children and young people, the language of the first shared aim which relates to children and young people is extremely problematic. The Strategy talks of the need to, ‘improve attitudes’ among young people so that they can play a full and active role in building good relations. The implication of the use of such language is that it is the attitudes of young people which prevents them from being able to play an active role in building good relations. There is no recognition of the particular circumstances which children and young people growing up in Northern Ireland today

¹⁸ S. McAlister, D. Haydon, and P. Scraton (2013). “Violence in the Lives of Children and Youth in ‘Post-Conflict’ Northern Ireland.” <http://www.jstor.org/action/showPublication?journalCode=chilyoutenvi>.

¹⁹ The Good Friday Agreement: Agreement reached in multi-party negotiations, April 1998.

²⁰ ‘Together: Building a United Community’ Strategy, OFMDFM, May 23 2013.

face, particularly those children and young people living in areas which have been most impacted upon by the conflict. **There is no other group singled out under the Strategy in this manner, again suggesting that young people are to blame for the divisions in Northern Ireland when in fact they are impacted by the consequences of these.** The problems of division, segregation and sectarianism, all of which were deeply ingrained in Northern Ireland before the birth of this generation of young people, require a much more comprehensive solution other than improving the attitudes of young people. While young people certainly have a vital role to play in moving towards a more peaceful and stable future in Northern Ireland, it is adults and Government who must ensure that they are included and facilitated to play such a role. Central to this is the need to urgently address the serious disadvantage many young people face on a daily basis as a result of living with the legacy of a conflict.

In light of the need for a framework to better protect the rights of children in Northern Ireland it is extremely disappointing that no progress has been made in delivering a Bill of Rights since the Northern Ireland Human Rights Commission advised the UK Government on recommendations for the content of a Bill of Rights for Northern Ireland in 2008. In delivering on the commitments enshrined in the Belfast/Good Friday Agreement and dealing with the legacy of the past, **NICCY recommends that there is a renewed emphasis on bringing forward a Bill of Rights for Northern Ireland, which includes a stand-alone section on children's rights which incorporates the UNCRC into domestic legislation.** The Bill of Rights is an integral part of the Northern Ireland peace agreement which should ensure that past abuses of human rights which fuelled and maintained the conflict, can never recur and that society moves forward on the basis of respect for human rights and equality for all. As outlined above, children and young people are and have been particularly adversely affected by the conflict and violence in our society over recent decades. The guaranteeing of protection and respect for children's rights are essential in securing a better future for all children, something which a Bill of Rights for Northern Ireland has significant potential to help achieve. It is vital that there is a renewed focus on the development of a jurisdiction specific Bill of Rights for Northern Ireland as it represents a unique opportunity to enshrine children's rights at a constitutional level in Northern Ireland.

Children and Young People and Addressing the Legacy of Northern Ireland's Past

It is extremely disappointing to again note a failure to include children and young people in the current consultation in addressing the legacy of Northern Ireland's past. NICCY recommends that current and future proposals aimed at dealing with the legacy of the past

in Northern Ireland take adequate cognisance of children and young people, the impact of the conflict on their lives and ensures that they are afforded a central role in progression towards a more peaceful and stable society. Excluding children and young people from proposals on how we address the past will only serve to further marginalise and exclude this group, who are already paying a huge price in living with the legacy of a conflict not of their making. **Children and young people must to be included in Government's proposals on 'Addressing the Legacy of Northern Ireland's Past'.**

One of the issues which we believe needs to be addressed with regard to these proposals is the narrow view which appears to have been assumed of who has been impacted upon by the Northern Ireland conflict. There are many references in the consultation document to 'victims and survivors' of the conflict which relate solely to people who died or were injured during the Troubles.²¹ We do not wish to engage in a discussion with regard to the definition of a 'victim' it is NICCY's view, from ongoing and intensive engagement with children and young people, that the impact of Northern Ireland's past is not confined to those who died or were injured during the Troubles. **Given the context for children as young people as outlined above, it is extremely disappointing that the transgenerational impact of the conflict on children and young people has been entirely ignored in the context of the current consultation.**

With regard to the **Historical Investigations Unit (HIU)**, children and young people, as members of families whose cases are being examined by the HUI, will be impacted upon by the work of this body. However, no reference is made as to how children and young people will be supported by the HIU and the potential impact on children and young people through the carrying out of its work. Consideration needs to be given to ensuring that children and young people's needs and best interests are adequately taken cognisance of in the work of the HIU and mechanisms be put in place to adequately support them to be involved in the work of this body. This should include the provision of child accessible processes, communication mechanisms and documentation, the use of language that children understand and the provision of practical and emotional support.

With regard to the **Independent Commission on Information Retrieval (ICIR)**, NICCY envisages a number of scenarios whereby information may be sought on a troubles related death by a child or a young person. The Commissioner reminds the NIO of the right of children and young people to information under Article 13 of the UNCRC. It is unclear from the consultation whether applications to provide information on a Troubles

²¹ Page 21, *Consultation Paper Addressing the Legacy of Northern Ireland's Past*, NIO, May 2018.

related death from a child or young person will be considered. It is also unclear how decisions will be made about whether information requested should be provided to a young person. The event of a child or young person making an application for information should be addressed in the consultation document and clarity provided around how decisions will be made on whether to share the information, with the best interests of the child as the primary consideration. **NICCY calls on the NIO ensures that adequate support is put in place for children and young people who may wish to make an application for information on a troubles related death to the ICIR.** As above, this should include the provision of child accessible processes, communication mechanisms and documentation, assistance to make an application for information, the transmission of decisions based on children's best interests and reports in a child accessible medium, using language that children understand and the provision of practical and emotional support upon accessing information.

With regard to the **Oral History Archive (OHA)** children appear to be entirely precluded from being able to contribute. When explaining the purpose of the OHA, the consultation document states that,

“Anyone who has been touched by the Troubles would be able to share their memories and tell their stories and have these recorded in the Archive.”²²

However it goes on to state that,

*“This would include victims and survivors, but also former soldiers and police officers, members of the emergency services, former paramilitaries, and anyone who **lived through** (our emphasis) this difficult period on Northern Ireland's history.”²³*

The Supplementary information on the OHA in the consultation document elaborates further on the time period covered with regard to the OHA. It states that this would primarily cover the period between 1 January 1966 and 10 April 1998 but could include other significant events outside of this time period.²⁴ As the cut-off point proposed is over twenty years ago, it will therefore be impossible for any child or young person to contribute to the OHA. It is NICCY's view that the timeframe covered by the OHA should be urgently revised. We do not see any rationale for the timeframe to be prescribed as such and

²² Page 44, *Consultation Paper Addressing the Legacy of Northern Ireland's Past*, NIO, May 2018.

²³ *Ibid.*

²⁴ Page 65, *Consultation Paper Addressing the Legacy of Northern Ireland's Past*, NIO, May 2018

believe that in the interests of inclusivity, empowerment and completeness, anyone who wishes to tell their story about how their life has been and continues to be impacted upon by the Troubles should be facilitated to do so, without any timeframe being imposed. Children and young people who NICCY engages with have been very clear that the impact of the conflict in Northern Ireland is still very keenly felt in a wide range of communities.

As outlined above, evidence shows the hugely detrimental impact that the conflict continues to have on children's lives in Northern Ireland. Children and young people have the right under Article 12 of the UNCRC and section 75 of the Northern Ireland Act 1998 to have their views heard and taken into account on matters which impact on their lives. It is imperative that the timeframe relating to contributions for the OHA is removed and systems put in place to encourage children and young people to tell their stories about the impact of the conflict on their lives in a way that they are comfortable with, understand and are supported in doing to. If we are committed to meaningfully addressing the legacy of Northern Ireland's past, we must ensure that all of the stories about the legacy of the conflict can be told, heard and recorded. **The exclusion of children and young people from being able to contribute to the OHA sends a message to children and young people, some of whom are living in very difficult circumstances as a direct result of the legacy of the conflict, that their stories are unimportant, their experiences irrelevant and their contributions invalid. This is not a firm and inclusive foundation for moving forward to meaningfully address the legacy of Northern Ireland's past and must be immediately addressed.**

With regard to the **Implementation and Reconciliation Group (IRG)**, again there appears to be no mechanism to hear the views of children and young people as part of the work of this body. NICCY notes that the primary functions of the IRG include the promotion of reconciliation in Northern Ireland and one of the key outputs of this body is the production of academic reports based on information provided by the HIU, ICIR, OHA and Coroners Court. As already stated, the consultation document provides no opportunity for the views and experiences of children and young people to be taken cognisance of through any of these bodies. This means that if proposals are progressed as outlined in the consultation document, children and young people will have no role in the work of the IRG and their view and experiences will fall entirely outside of the institutions being set up to work towards a more positive future for the very young people who are being ignored.

It is fundamentally important that the proposals are significantly amended to ensure that children and young people are facilitated and encouraged to engage in the work of the IRG. Their views must be heard and taken into account in line with Article 12 of the

UNCRC and section 75 of the Northern Ireland Act 1998. A vital part of promoting reconciliation in Northern Ireland will be obtaining a clear and current understanding of the legacy of the conflict in Northern Ireland and the impact that it has on the lives of children and young people. We cannot, as a society, begin to address the legacy of the conflict without a complete and clear picture of its impacts and legacy and the views of children and young people must be central to this work. **To preclude their involvement is flawed from the outset, in breach of international children's rights standards and will undermine the ability of these bodies to comprehensively address the legacy of Northern Ireland's past in a manner which is inclusive of all who have been impacted by it.**

Impact of the Consultation Proposals on Equality

As already clearly stated, children and young people are entirely absent from the current consultation. As one of the nine protected groups under section 75 of the Northern Ireland Act 1998, this is a grave omission which NICCY believes to be in direct conflict with the letter and spirit of the equality provisions of the Good Friday/Belfast Agreement. NICCY wishes to request copies of the screening documentation relating to the current consultation as it is NICCY's view that a section 75 compliant screening exercise, relying on disaggregated data relating to the legacy impact of the conflict on children's lives would have highlighted the need for a comprehensive equality impact assessment (EQIA) to have been carried out on the current proposals.

It is clear that there is significant potential for adverse impact on the enjoyment of equality of opportunity by children and young people through their complete exclusion from the current consultation document and the new institutions contained within it.

Section 75 is a tool for ensuring that equality considerations are central to decision making. It is not intended to be used when firm policy decisions have been taken e.g. with regard to the scope of the bodies to whom this consultation relates, with no regard shown to the obligation to have due regard to the need to promote equality of opportunity. To do so is a breach of a designated public authority's statutory equality obligations.

The Equality Commission's Guidance for Implementing Section 75 is very clear about the stage at which public authorities need to screen policy proposals and carry out EQIA's where required. The Guidance states that,

“Section 75 is important to policy formulation (new or proposed policies) and policy review (existing policies). It is important that public authorities use the assessment of policies for impact on equality of opportunity, including screening and equality impact assessment, as part of their policy development process, rather than as an afterthought when the policy has been established.”²⁵

The Equality Commission’s Guidance for public authorities is clear that the section 75 statutory duties make equality and good relations central to the whole range of public policy decision making, an approach referred to as mainstreaming. Mainstreaming involves an equality perspective being incorporated in all policies at all levels and at all stages.²⁶ The Commission states that screening is,

“...one of the key tools to enable public authorities to fulfil their statutory obligations and mainstream the Section 75 equality and good relations duties into policy development and service delivery. It provides an opportunity to improve decision-making and support ‘evidence based’ policy making.”²⁷

The Commission’s Guidance is also clear that screening is more useful if introduced at an early stage when developing a policy and that undertaking screening after a policy has been developed can be inefficient and ineffective if decision makers are reticent to make changes at a later stage.²⁸ The Equality Commission also emphasises the benefits of consultation, stating that it can help public authorities to become aware of issues and problems which policies may pose for various individuals or groups and which the authority might not otherwise discover and that it provides an important means of enabling those who may be adversely affected by a policy to participate in policy making.²⁹ Consultation with affected individuals and representative groups should begin as early as possible and specific consideration should be given to how best to communicate information to children and young people including those with learning disabilities.³⁰

NICCY believes that a thorough assessment through an EQIA is therefore vital in order to develop these proposals to ensure that children and young people are included within the

²⁵ Page 13, April 2010

²⁶ Page 8

²⁷ Page 51

²⁸ Page 51

²⁹ Page 36

³⁰ Page 38

work and scope of the HUI, ICIR, OHA and IRG and enjoy equality of opportunity as is required by section 75 of the Northern Ireland Act 1998.

It is NICCY's view that one of the most important elements of the EQIA process is the consideration of measures which might mitigate any adverse impact and the development of alternative policies which might better achieve the promotion of equality of opportunity. Where the potential for adverse impact or the potential to better promote enjoyment of equality of opportunity on any members of the nine section 75 categories is identified through screening, which it certainly should have been in this case, public authorities are obliged to consider measures which might mitigate the adverse impact or alternative policies which might better achieve the promotion of equality of opportunity, which will further the policy aims without having any adverse impact or having a more positive impact on the enjoyment of equality of opportunity by members of the nine section 75 categories. NICCY would submit that an EQIA of the current proposals would result in the NIO developing specific provision for the inclusion of children and young people of all ages within the work of the HUI, ICIR, OHA and IRG and would also result in the development of the measures we have outlined throughout this submission relating to communication, support, child accessible processes, the use of child friendly language and the accessibility of information. NICCY therefore recommends that the NIO urgently carries out a full and comprehensive EQIA, taking all relevant disaggregated data into account on the impact of the conflict of children's lives as required by section 75 of the Northern Ireland Act 1998.

In addition, these proposals will directly affect children and young people and so they must be consulted in relation to them. The NIO's approved Equality Scheme commits to ensuring that all consultations will seek the views of those directly affected by the matter/policy.³¹ NICCY is unaware of the level of direct consultation with children and young people being undertaken by the NIO on the current consultation. It is vitally important that children and young people are directly consulted with on the proposals to ensure that the NIO is in compliance with its approved Equality Scheme. Both the ECNI's Guidance for Public Authorities³² and the NIO's approved Equality Scheme³³ reinforce the need to take appropriate measures to ensure full participation in any meetings that are held. This should include consideration of the time of day, the appropriateness of the venue, accessibility, how the meeting is to be conducted, the use of appropriate language,

³¹ Para 3.3., Northern Ireland Office Equality Scheme, November 2013.

³² Let's Talk, Let's Listen: Guidance for public authorities on consulting and involving children and young people' Equality Commission for Northern Ireland, May 2008, Pg. 39.

³³ *Op cit.* 27, paras 3.4 – 3.6.

whether a signer and/or interpreter is necessary, and whether the provision of childcare and support for other carers is required. The NIO also commits to giving specific taking account of existing and developing good practice, including the ECNI's Guidance, *Let's Talk Let's Listen – Guidance for public authorities on consulting and involving children and young people (2008)*.³⁴ 'Let's Talk, Let's Listen' states that,

*“Children and young people have particular needs concerning information and to take part in consultation and decision-making processes, especially on issues that affect them. It is particularly important that you consider which methods are most appropriate for consulting children and young people. You should also make sure that you provide information which is clear, easy to understand and in an appropriate format, to make sure there are no problems preventing you from consulting children and young people.”*³⁵

NICCY would therefore request information from the NIO on the level of direct consultation it is carrying out on the current proposals with children and young people in compliance with its statutory equality obligations under section 75 and Article 12 of the UNCRC.

Conclusion

The NI Commissioner for Children and Young People calls for the views and experiences of children and young people are adequately reflected and taken cognisance of in developing proposals and drafting legislation to deal with the legacy of Northern Ireland's past. In light of the issues raised in this submission, children should be involved in developing these and such proposals should take full cognisance of the impact of the conflict on their daily lives in a manner which upholds their rights.

It is vital to remember that Northern Ireland is a society in transition and issues relating to violence and sectarianism still exist in communities and children and young people still live under this threat. Given the “conflict profile” of children in Northern Ireland, it is essential there is increased investment in addressing the very serious issues which children and young people face as a result of living with the legacy of the conflict. As well as robustly addressing the reality of the lives of children who experience violence and sectarianism, it is vital that children and young people are prepared and supported to make their

³⁴ *Ibid*, para.3.7.

³⁵ *Ibid*, para 2.26.

contribution towards a more peaceful and stable future in a number of ways. Young people from NI recently participated in the UN Committee of the Rights of the Child General Day of Discussion on Children as Human Rights Defenders. Their chosen theme was the role of children living in a society emerging from conflict where they were clear that they should supported to have their say and that adults and Government must be prepared to listen and act. Also fundamental are increased investment in addressing child and adolescent mental health services, child poverty, educational inequalities, the provision of training and employment opportunities for children and young people and youth focused services in the communities most impacted upon by the conflict.