

**Response from the Committee on the Administration of Justice  
to the Consultation Paper on  
A Commissioner for Children in Northern Ireland**

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights. In 1998 it was awarded the Council of Europe's Human Rights Prize.

We welcome the proposal to create the post of Commissioner for Children in N.I and this opportunity to respond to the government's consultation paper on the Commissioner's role, functions and powers. We commend the assertion in the paper that the bedrock for children's rights should be the international standards, in particular the United Nations Convention on the Rights of the Child (UNCRC). CAJ supports the view that the Commissioner should be an independent impartial and influential champion for children outside of government. The standards set out in the Principles relating to the Status of Independent National Human Rights Institutions – the Paris Principles, are the agreed international standards on the operation of institutions such as the proposed Commissioner's office and provide a useful way of assessing the government's proposals or the recommendations of others.

The consultation paper sets out a number of questions relating to the Commissioner's role, functions and powers. For ease of reference we have addressed ourselves to these questions

## **Functions**

**Do you think the Commissioner should carry out the functions in section 3.3? Are there functions which you believe should be omitted or added?**

CAJ believes that the functions set out in section 3.3 are all appropriate to the role of a Commissioner for Children. It is essential that the Commissioner undertakes the "promoting rights, advocacy, advice and watchdog functions" outlined. We support the view that the Commissioner should monitor and report on the implementation of the United Nations Convention on the Rights of the Child (UNCRC). We agree with the assertions (pg 9) that children as citizens require special measures such as the creation of the post of Commissioner for Children given that they have "no right to vote... (have) very limited economic or social power...(and) ... are particularly vulnerable to manipulation, ill-treatment or abuse..."

CAJ believes that the participation of children in the civic life of their communities is crucial to the development of the "culture of children's rights" which the new Commissioner will endeavour to promote. The current marginalisation of children from decision making and participation in civic life is a significant factor in making them vulnerable to various forms of oppression and abuse.

It may, therefore be useful to add two more explicit obligations for the Commissioner:

"to promote the appropriate participation of children in the social, cultural and economic life of their communities" and;

"to explore ways in which children's views and opinions can be given due weight in all matters affecting them in accordance with their age and maturity".

Progress in these key areas will have important implications for the success of all the other aspects of the Commissioner's work.

**“Should the Commissioner for Children have a role in promoting rights generally and also in acting as an ombudsman or should it be one or the other? If the Commissioner is to have both sets of functions, what should the balance be between them?”**

Section 3.3 sets out the role of an ombudsman in relation to children. While the advocacy role outlined above provides the breadth of a Commissioner's role, the “ombudsman” functions would provide depth. This is consistent with the Paris Principles which assert that the institution should be given “a broad mandate” in promoting and protecting rights and should be able to hear complaints. It is clearly essential however that the office be given the necessary funds to carry out both aspects of its work.

One might expect that the priority attached to each aspect of the work would alter over time but this should be a matter for the Ombudsman to consider. In the early period for example one might expect considerable effort to be expended on the development of a children's rights culture with a strong emphasis on participation.

**“Should the Commissioner for Children have a role in investigating complaints? If so what should that role be:**

- **all complaints or**
- **complaints which cannot be dealt with by other authorities”.**

CAJ believes that the Commissioner for Children should be able to investigate complaints and have all the powers necessary to do so as provided for in the Paris Principles. We would not support the view that all complaints involving children should be dealt with by the Commissioner. This would not only be a huge remit but would run counter to our view that children's participation in

civic life should be promoted. Children should access services, including services providing remedy for complaints, on an equal basis with adults. It will be important, however, that those public authorities providing a service to children are able to do so in a child friendly manner. The Commissioner should, therefore, have appropriate powers to monitor this and recommend suitable remedial action when necessary (see powers below).

**“Should the Commissioner have a role in legal proceedings?...”**

CAJ agrees that the Commissioner should have a role in

- “assisting children to take cases, including (provision of) financial assistance;
- taking cases in his or her own name where he or she believes there has been a denial of children’s rights;
- intervening in legal proceedings as a third party from a children’s rights perspective;
- acting as an amicus curiae in proceedings from a children’s rights perspective;
- representing children in legal proceedings”

It will be important to ensure that, where there is overlap or potential for overlap between the Commissioner and other human rights institutions or ombudsman offices that a memorandum of understanding is drawn up. It would be unfortunate if the creation of this office were to lead to a reluctance on the part of other agencies to take cases on behalf of children. Where other agencies could take a case on behalf of a child they should do so, with the Commissioner’s office playing a monitoring and/or supporting role. The Commissioner should have a clear power and the necessary resources to take cases in a broad range of circumstances.

Given the difficulties experienced by the Human Rights Commission in relation to third party interventions it is essential that this power be clearly provided for on the face of the statute.

**“Bearing in mind the functions that you think a Commissioner should carry out, which of the powers set out in section 3.4 (or other powers) do you think a Commissioner should have?”**

The consultation paper sets out seven points in relation to the Commissioner’s powers which we regard as broadly appropriate. As regards the first point, we support the view that the Commissioner should monitor public authorities’ compliance with UNCRC and the adequacy of policy procedures and services affecting children. We accept that it is reasonable to establish a process whereby the Commissioner makes recommendations to the authority which it must respond to within a set time. In this context it may be useful to include a positive obligation on public authorities to assist the Commissioner, in the exercise of his or her functions to the extent that this is compatible with the authorities own remit. This has potential to protect the Commission budget and ensure that authorities do not oblige the Commissioner to incur unnecessary expense or difficulty in the exercise of his or her functions.<sup>1</sup>

In relation to the second point we agree that the Commissioner should have the “power to call for persons and papers”. However we have some concerns about the impact which the assertion that “the Commissioner should only be allowed to have access to confidential information about children with the consent of parents and children, where appropriate” might have on investigations. Clearly there are circumstances when it may be in the child’s best interests or in the public interest for information to be disclosed and the parents or guardians may be unwilling to consent to this.

The issue of access to information on children and their circumstances is, however, a complex one. It is important that no identifiable information on a child be circulated or in the public domain without the consent of a person with

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<sup>1</sup> Section 46 of the Children (NI) Order 1995 currently obliges other public authorities to assist Health and Social Services authorities in the exercise of their functions to the extent to which this is compatible with the authorities own functions. We understand that it is proposed that these obligations be strengthened. We believe strong obligations on other public authorities to assist the Commissioner in the exercise of his or her functions will help make the work load more manageable and place less strain on the budget.

parental responsibility and/or the child, where appropriate. However it will be important that the Commissioner is able to access information on children's circumstances to the maximum extent possible which is compatible with the right to privacy of adults and children for research and other purposes.

To this end we suggest that it would be appropriate for all public authorities to ask adults and children using their services to indicate if they would object to the Commissioner obtaining anonymised information for the purposes of researching any children's rights issue. A statistical record of numbers refusing to consent should be kept.

The obligation to indicate refusal rather than wait until an issue arises and then have to trace and consult each child and family would be more cost effective and more likely to ensure the Commissioner is not unnecessarily obstructed in obtaining information. There may also be circumstances in which it would be in an individual child's best interests or in the public interest for the Commissioner to access the information. This may be particularly so if, for example, there is a conflict of interest between parent and child and the child cannot consent for reasons of age, maturity or capacity. These exceptions should be carefully considered so that children, whether collectively or individually, are not disadvantaged or the Commissioners work unnecessarily obstructed.

In relation to points 3 – 7 CAJ agrees the Commissioner “be given access to all public and private institutions for children....power to assist children, including financially, in connection with legal proceedings in respect of alleged breaches of their rights...power to bring proceedings...relating to the protection of children's rights...power to intervene as a third party in legal proceedings...(and) power to act as an amicus curiae...”

**Should it be a specific criminal offence to obstruct the Commissioner in carrying out his or her functions or should obstruction be treated as contempt of court?**

We agree with the suggestion in the consultation paper that if obstruction is treated as contempt of court it is a strong and flexible measure which would best ensure that any sanction was at an appropriate level.

## **Questions on Remit**

The consultation paper sets five questions on the Commissioner's remit. CAJ answers as follows:

The Commissioner's remit should cover all children up to the age of 18 years not just those considered at risk or in need. For those young people who have been looked after by public authorities, the Commissioner should be able to monitor services provided to them up to 21 years, as proposed in the consultation paper.

The exercise of parental responsibility is a key issue for children, as is the balance of rights, responsibilities and control between adults and children. CAJ believes, therefore, that the Commissioner should be able to consider these matters within his or her remit. Children who live here temporarily, and children of refugees and asylum seekers, are very vulnerable and so should be able to seek the Commissioner's assistance and protection

CAJ has been gravely concerned about the treatment of young people in the juvenile justice system for many years. The UN Committee on the Rights of the Child has asked the UK government to review this system for compliance with the Convention <sup>2</sup>

It will not be possible for the Commissioner to monitor fully the implementation of UNCRC unless the juvenile justice system is included within the Commissioner's remit.

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<sup>2</sup> United Nations Committee on the Rights of the Child, January 1995, Eighth session "Consideration of reports submitted by State Parties under Article 44 of the Convention.

## **Appointment and Accountability**

It will, of course, be important that children are involved in the appointment process. We agree with the consultation paper's proposal that the young people involved should be given comprehensive guidance on their role, including confidentiality, equality of opportunity and assessing candidates against agreed criteria. It would be useful if 2 members of the young persons panel were delegated to sit on the final formal selection panel, as suggested.

The proposal that, we follow the Norwegian example and appoint the Commissioner for 4 years with the opportunity for reappointment for one further term is acceptable, as are the reporting arrangements – provision of annual reports to the Assembly; being accountable to the Assembly's Public Accounts Committee for expenditure and so on. We agree that young people should be involved in the accountability arrangements. The establishment of schools councils, and other structures to promote children's participation could provide useful avenues to explore in making the Commissioner more directly accountable to children. As with the selection process, children involved in monitoring the Commissioner's work will need appropriate training and support to do so.

CAJ accepts that it would be appropriate to broaden the NI Ombudsman's role to deal with complaints about the Commissioner and that he or she should be bound by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998.

In conclusion CAJ welcomes the initiative taken by OFMDFM in making these proposals for a Commissioner for Children. We hope that the recommendations we have made can be incorporated and that the forthcoming legislation can reflect this early promise.