

**NORTHERN IRELAND NGO STAKEHOLDER REPORT
TO INFORM THE UN COMMITTEE ON THE RIGHTS OF THE CHILD'S
'LIST OF ISSUES PRIOR TO REPORTING'**

SUPPORTING EVIDENCE

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INTRODUCTION

Initial Stakeholder Report from NGOs in Northern Ireland

This Report provides background information and **supporting evidence** for the *Northern Ireland NGO Stakeholder Report to Inform the List of Issues Prior to Reporting*¹ (see Appendix 1: Suggested Questions). The ‘List of Issues’ is due to be sent to the UK Government by the Committee on the Rights of the Child [CRC] in February 2021. Building on the CRC’s 2016 Concluding Observations,² these Reports highlight key issues affecting the promotion and protection of children’s rights in Northern Ireland [NI] over the four years 2016-2020. As in the UNCRC definition of the child, any reference to ‘child(ren)’ refers to under-18s. In September 2020, the Children’s Law Centre [CLC] contacted voluntary and community sector organisations working with children, young people and families across Northern Ireland requesting information about what they considered to be the key issues affecting realisation of children’s rights. This Report draws on their submissions as well as relevant statistics and research or consultation with children. CLC would like to thank the organisations and individuals who provided a wealth of evidence to inform these Reports. In addition, thanks to National Children’s Bureau and Include Youth who provided administrative support and advice during the preparation of both Reports. Finally, CLC would like to recognise the financial support provided by the NI Commission for Children and Young People in the compilation of these Reports, and to thank NICCY for this. The *NI NGO Stakeholder* and *Supporting Evidence* Reports have been endorsed by 48 organisations/ individuals (see Appendix 2: Endorsements and Submission of Information).

Context

Since the last periodic reporting process involving the UK Government and devolved administrations in 2016, a number of challenges have disproportionately affected the rights of children in Northern Ireland, both directly and indirectly.³

On 23 June 2016, 52% of UK voters in the ‘EU referendum’ voted to leave the EU - commonly referred to as ‘**Brexit**’. (In Northern Ireland 56% voted to remain). Thereafter, the *European Union (Withdrawal Agreement) Act 2020* was passed. The ‘Withdrawal Agreement’ entered into by the UK and EU provided for the UK to leave the EU on 31 January 2020, with special provisions existing after the end of the ‘withdrawal period’ on 31 December 2020 for Northern Ireland in recognition of the *Belfast/ Good Friday*

¹ The *NI NGO Stakeholder Report to Inform the CRC’s List of Issues Prior to Reporting* is available at: <https://childrenslawcentre.org.uk/?mdocs-file=4166>

² CRC (2016) *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/5, 12 July 2016

³ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, October 2020

Agreement and its border with the Republic of Ireland, including a commitment that there would be “no diminution of rights”.

The **Northern Ireland Assembly** was **suspended** on **16 January 2017**, when power-sharing arrangements collapsed, and was not re-instated **until 13 January 2020**. During this period no local legislation could be passed,⁴ and civil servants were precluded from filling the void by entering into any ad hoc arrangements on the grounds that this was beyond their legal powers or authority.⁵

As elsewhere in the UK, Northern Ireland went into a ‘lockdown’ on 23 March 2020 in response to the threat posed to the coping capacity of the NHS by the **Coronavirus pandemic** and all schools in Northern Ireland were closed (with a phased re-opening in September). The *Coronavirus Act 2020* was passed on 25 March 2020 and came into force on the same day. It empowers Ministers in Northern Ireland (as well as those in Britain) to make regulations in a range of sectors to limit transmission of the disease, ease the burden on public health services, assist healthcare workers and the economically affected. Children have raised a number of concerns regarding the pandemic, including: impacts on the physical and emotional health of children and young people, particularly those who are vulnerable; restricted opportunities for play and leisure; negative stereotyping of young people as the main group spreading the virus; the need for dissemination of accurate information about COVID-19 in child-friendly formats and digital poverty.⁶

Over the period 2016 to 2018 the **Northern Ireland economy stagnated** from the combined effect of the political vacuum and Brexit.⁷ With the added impact of COVID-19, and heightened concern over the ‘trade agreement’ between the UK and the EU after the ‘withdrawal period’, the Purchasing Managers Index evidenced that the Northern Ireland economy had entered into recession in the last quarter of 2019.⁸ The UK economy as a whole entered into recession in the second quarter of 2020 as a result of the combined effect of Brexit and COVID-19.⁹ This is significant as the Northern Ireland economy is

⁴ For example, the House of Commons Northern Ireland Affairs Committee, considering education funding in Northern Ireland, stated: “the political deadlock at Stormont has meant that the education system has been unable to respond to the urgent challenges facing schools”, and that the UK’s approach of passing budgets for Northern Ireland on a rolling annual basis “has been an obstacle to investment and improvement in children’s education”, *HC 1497 of Session 2017–19*, 22 July 2019, pp 56–7

⁵ *Re Buick’s application (ARC21) for Judicial Review* [2018] NIQB 43 – Keegan J delivered 14 May 2018

⁶ NI Youth Forum submission to Children’s Law Centre, September 2020

⁷ NISRA (2018) *Northern Ireland Composite Economic Index (NICEI) Quarter 1 2018*

⁸ Rice, C. (2019) *Northern Ireland economy ‘enters or is entering’ recession*, BBC NEWS, 9 September 2019. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-49609767>

⁹ Office of National Statistics (2020) *Coronavirus and the impact on output in the UK economy: June 2020*, 12 August 2020

dependent on Westminster to provide economic support once that from the EU is no longer available, including financial assistance to manage the additional costs of transition. Deterioration in the finances of their carers, and the economy as a whole, will have a significant impact on children – as previously evidenced.¹⁰

A. GENERAL MEASURES OF IMPLEMENTATION OF THE UNCRC

Legislation

There is a significant **threat to protection of children’s rights following withdrawal of the UK from the European Union**. A key provision of the *Belfast/Good Friday Agreement*, the *Human Rights Act 1998* [HRA] currently gives further effect to rights from the *European Convention on Human Rights* [ECHR] in domestic legislation across the UK and allows access to UK courts for violations of ECHR rights, although it does not represent full protection of the ECHR. For example, there is no free-standing right to prohibition of discrimination (included in Article 1 of Protocol No. 12 of the ECHR, which the UK has not ratified). The Act primarily protects civil and political rights, but in the absence of wider enforceable economic and social rights protections of children and young people (such as those in the UNCRC) the articles of the HRA have been used in the protection of social and economic rights, including for children.¹¹ Following withdrawal of the UK from the European Union, the Conservative government has indicated **likely repeal of the HRA** and its replacement with a *British Bill of Rights*. In response to a letter from Harriet Harman, Chair of the Joint Committee on Human Rights, following media reports in September 2020 that the government was planning to opt out of major parts of European human rights law, on 7 October Lord Chancellor Robert Buckland stated: “As set out in our manifesto, the government will look at the broader aspects of our constitution including the balance between the rights of individuals and effective government. This includes a commitment to updating the Human Rights Act 1998.” On 7 December the government launched an independent review to examine whether there is a need to reform the HRA - to be conducted by a panel of experts, chaired by retired Lord Justice Sir Peter Gross, this is due to report by the end of 2021.¹²

¹⁰ See: Fanjul, G. (2014) *Children of the Recession: The impact of the economic crisis on child well-being in rich countries*, UNICEF; Child Poverty Alliance (2014) *Beneath the Surface: Child Poverty in Northern Ireland*

¹¹ See: Decision: McAlinden J delivered on 7 July 2020 in NI High Court in the matter of an application for leave to apply for a Judicial Review by Lorraine Cox, a single mother of three, regarding different treatment of social security benefit claimants with a terminal illness. Available at: <https://lawcentreni.s3.amazonaws.com/McA11286Final-Typed.pdf>

¹² Monye Anyadike-Danes, QC, submission to Children’s Law Centre, December 2020

Some within the Conservative Party have also proposed a withdrawal of the UK from the *European Convention on Human Rights*:

“If we want to reform human rights laws in this country, it isn’t the EU we should leave but the ECHR and the jurisdiction of its Court.” (Theresa May, then Home Secretary, April 2016)

“The Government are committed to scrapping the *Human Rights Act* and introducing a *British Bill of Rights*.” (Elizabeth Truss, then Lord Chancellor and Secretary of State for Justice, September 2016)

“We will not repeal or replace the *Human Rights Act* while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes.” (Conservative Party Manifesto, 2017)

“There is a discussion to be had around how essential the *Human Rights Act* is to protecting rights. But with Brexit, now is not the right time to have that discussion.” (David Gauke, Lord Chancellor and Secretary of State for Justice, May 2018)

“We will update the *Human Rights Act* and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.” (Conservative Party Manifesto, 2019).

UN bodies have consistently argued that any legislative changes require consultation and should not erode the protections provided by the HRA but should strengthen the status of international human rights to provide effective protection of these rights across all UK jurisdictions.¹³ The desire of the UK government in Westminster to alter or diminish the protections afforded by the HRA is in marked contrast to the views of the public in Northern Ireland - in 2017, 84% of respondents to a Human Rights Consortium poll believed that the HRA “is good for Northern Ireland”.¹⁴

There are significant **concerns about the adverse impacts of withdrawal from the EU human rights framework**. The UNCRC has been a guiding influence on EU law concerning children, influencing how law-making institutions have viewed their role as protectors of the best interests of the child and ensuring that children’s rights have been central to law making. The EU human rights framework protects rights across a number of legal mechanisms: EU treaties, the EU *Charter of Fundamental Rights*, directives, regulations and case law, all of which have had a significant impact on the rights of the child. Significantly,

¹³ Committee on Economic, Social and Cultural Rights, July 2016; Committee on the Elimination of Racial Discrimination, August 2016; Ireland, UPR, May 2017; Ukraine, UPR, May 2017; Uzbekistan, UPR, May 2017; Committee on the Elimination of All Forms of Discrimination Against Women, 2019.

¹⁴ Human Rights Consortium (2017) *Attitudes to Human Rights in Northern Ireland. Polling Data*, p11 Available at: <http://www.humanrightsconsortium.org/wp-content/uploads/2017/07/Attitudes-to-Human-Rights-in-Northern-Ireland-Polling-Data-1.pdf>

the EU Charter uses the UNCRC as the underpinning framework for its recognition of children's rights. At a policy level, the EU has committed to embedding children's rights in all its actions, setting out this commitment in the *EU Agenda on the Rights of the Child*. As identified by the European Children's Rights Unit in evidence to the Joint Select Committee on Human Rights in 2016: "CRC-inspired references are now an increasingly routine feature of EU-level legislative and policy measures relating to children, particularly in the context of EU free movement law, immigration and asylum law, EU family law, EU criminal law, and policies seeking to tackle poverty and social exclusion."¹⁵ The EU Commission's compilation of law and policy on the rights of the child runs to more than 100 pages,¹⁶ covering everything from standardization of toy safety to data protection and privacy, child abuse and exploitation. Having the UNCRC embedded within EU law has allowed for these protections to be enforced at a local level, including through the courts. For example, under EU law, a child's fundamental right to education, regardless of their migration status, is recognised in virtually all aspects of EU migration law.¹⁷ The scope and limitation of EU law means that the EU does not have the competence to determine the substance or scope of national educational provisions. Rather, the EU protects migrant children's right to access education on the same or, depending on their status, similar basis as nationals. The children of EU migrants who move to another EU Member State under free movement law have the right to be admitted to that state's general educational, apprenticeship and vocational training courses under the same conditions as nationals, including access to educational maintenance grants.¹⁸

However, UK law has a dualist approach to international human rights Treaties - while there is a general duty on Ministers to act in compliance with international human rights standards, these rights are not directly enforceable in the courts. Although the UK has adopted some international principles in decisions relating to children, these are not always directly linked to the human rights principles in the UNCRC. As the UK moved to exit the structures of the European Union it ensured that elements of EU law were retained within domestic UK legislation through the *EU Withdrawal Act 2018*. One important exception was the *EU Charter of Fundamental Rights*, which the UK government argues is

¹⁵ Written evidence to the inquiry on the Human Rights Implications of Brexit, HL 88/HC 695, 19 December 2016, p37. Available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>, HBR0041

¹⁶ EC *acquis* and policy documents on the rights of the child, April 2020. Available at: https://ec.europa.eu/info/sites/info/files/eu_acquis_and_policy_documents_rights_of_the_child_april_20_2.pdf

¹⁷ Qualification Directive 2011/95/EU (recast) of the European Parliament and of the Council, 13 December 2011

¹⁸ Regulation 492/2011/EU on freedom of movement for workers within the Union (5 April 2011). In relation to maintenance grants see: C-3/90 *Bernini v Minister van Onderwijs en Wetenschappen* (26 February 1992). Available at: <http://curia.europa.eu/juris/celex.jsf?celex=61990CJ0003&lang1=en&type=TEXT&ancre=>

not required within UK law as it adds no additional rights to those already retained. In practice, the ability to ensure UNCRC compliance within EU competencies was directly linked to Charter provisions. The Transition Period is due to end on 31 December 2020. Many concerns are speculative as the future UK/EU relationship has not yet been agreed. However, potential rights violations as a consequence of Brexit are highly likely. For example, on the island of Ireland it is unclear how access to education for children who live in border areas or who move across the border will be accommodated by any Brexit agreement between the UK and the EU Commission. Having visited the UK in November 2018, the UN Special Rapporteur on extreme poverty and human rights stated that Brexit was likely to have adverse impacts on “the most vulnerable and disadvantaged members of society who will be least able to cope and will take the biggest hit”, and recommended “legislative recognition of social rights”.¹⁹

Questions:

- How will the UK government:
 - ensure current rights protections, including enforcement and remedies, enjoyed under the ECHR and the *Human Rights Act 1998* and provided for in the *Belfast/Good Friday Agreement* are maintained in any future legislation which amends or repeals this Act?
 - ensure there will be no diminution of children’s rights, including enforcement, post Brexit?
 - replace the protections of the *EU Charter of Fundamental Rights* and strengthen domestic human rights frameworks for children following the UK’s exit from the EU?

Despite the existence of a *Withdrawal Agreement* between the UK and EU, and an associated *Northern Ireland Protocol* intended to maintain an open border on the island of Ireland, the means by which the practical protection, maintenance and development of **cross-border arrangements and relationships** will be carried out is still unclear. The recently introduced *Internal Market Bill* gives Ministers power to amend the *Withdrawal Agreement*, allowing for primacy over any conflicting international law. Mainly concerning trade and the market for goods and services within the UK, the Northern Ireland Secretary admitted that that this Bill would “break international law in a very specific and limited way”,²⁰ setting an unwelcome precedent. In addition, the Common Travel Area [CTA] - a bilateral set of arrangements on cross-border cooperation between the UK and Ireland - is still in development and not set out in legislation. Engagement with civil society by the

¹⁹ Alston, P. (2018) *Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*, London, 16 November 2018, p3 and p23. Available at: https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf

²⁰ See: <https://www.bbc.co.uk/news/UK-politics-54073836> 8 September 2020

Human Rights Consortium has highlighted deep concern about any potential risk to the peace process amongst people in Northern Ireland, with anxiety that Brexit could lead to a hard border between Northern Ireland and the Republic of Ireland. Children and young people have identified a range of impacts resulting from the possible establishment of a hard border, including: increased travel time; disruption getting to school, visiting friends or accessing services across the border; needing a passport to travel a few miles and associated consequences if they could not afford a passport; the risk of an increased presence of paramilitaries in border areas; change in their relationships, sense of well-being, identity and belonging.²¹

Those living in border communities are acutely aware of the potential for Brexit to disrupt their lives in terms of cross-border access to healthcare,²² childcare,²³ child protection,²⁴ parental separation and child custody arrangements, the education of over 600 children who live on one side of the border but attend school on the other, membership of clubs, enjoyment of sport and leisure facilities, travel and freedom of movement.²⁵ The UK government or Northern Ireland Assembly cannot remedy such issues without them being addressed by both the UK and the EU Commission. It is essential that both parties to the negotiations tackle reciprocal rights issues, which extend far beyond trade and customs. Young people have argued that the implications of Brexit for people in the North and South of Ireland should be given special consideration during the negotiation process, and that the views of children and young people should be taken into consideration as they will have to live longest with the consequences.²⁶ The Northern Ireland Commissioner for Children and Young People has called on all those involved in negotiations to ensure no adverse

²¹ Children's Law Centre (2018) *'Greatest Impact – Least Heard' Hearing Young People's Voices on Brexit*. Available at: <https://www.childrenslawcentre.org.uk/images/Final-Brexit-Report-Greatest-Impact--Least-Heard--290618.pdf>

²² For example, the All-island paediatric cardiology service and Congenital Heart Disease Network; the Cooperation and Working Together programme funded by the EU to develop collaborative relationships including the Cross Border Treatment Scheme and services concerning alcohol abuse, eating disorders, diabetes, health inequalities, and supporting older people. See: Northern Ireland Confederation for Health and Social Care and NHS Confederation (2017) *Northern Ireland and the EU exit: A unique set of challenges*. Available at: <http://www.nhsconfed.org/resources/2017/03/northern-ireland-and-the-eu-exit>

²³ *NB v HMRC* (TC) [2016] NICom 47

²⁴ Child protection measures work on the basis of sharing of information across a range of agencies and through multilateral engagement with a range of security EU mechanisms such as European Arrest Warrants, Eurojust, EUROPOL, ECRIS and Schengen Information System.

²⁵ See: Children's Law Centre (2017) *Brexit: Potential Implications for Children and Young People in Northern Ireland*

²⁶ NICCY and Ombudsman for Children (2017) *It's Our Brexit Too: Children's Rights, Children's Voices*, Conference Report, 10 November 2017

impacts on children's rights and access to services as a result of Brexit, with clear communication of the final 'deal' and its implications to include child-accessible versions.²⁷

Question:

- What arrangements have the UK and Northern Ireland governments made with the EU, and bilaterally with Ireland, to ensure an open border?

Identity, citizenship and differential rights are key issues. At a UK level, the Brexit referendum campaign was built on a narrative of 'Britishness' and the UK 'taking back control' of laws, borders and sovereignty. According to young people, Brexit has increased both racial and sectarian tensions; affecting their lives, interpersonal relationships, friendships and deepening divisions (particularly hostility towards migrants).²⁸ It has also fuelled divisions based on ethno-political identity in Northern Ireland, increasing inter-community tension and identity politics. Both the EU and the UK "acknowledge[d] that the 1998 [Belfast/Good Friday] Agreement recognises the birth right of all the people of Northern Ireland to choose to be Irish or British or both and be accepted as such".²⁹ In a statement about the Brexit negotiations, the (then) Irish Taoiseach stated: "Everyone born in Northern Ireland will continue to have the right to Irish and therefore EU citizenship. So, a child born in Belfast or Derry today will have the right to study in Paris, buy property in Spain, work in Berlin or any other part of the European Union. All they have to do is exercise the right to Irish and therefore EU citizenship."³⁰ However, the impact of 'British'-identifying people losing access to EU citizenship and 'Irish'-identifying people retaining the rights attached to EU citizenship creates an inherent tension and potentially polarising difference in the enjoyment of rights between the two main ethno-political communities in Northern Ireland. It is important to recognise that children are generally not given a choice in the matter of identity and citizenship, yet this is likely to have a significant impact on the rights to which they have access.

Question:

²⁷ NICCY (2018) *UK Withdrawal from the EU. An overview of the potential impact on children in Northern Ireland*, Advice Paper, p25-26. Available at: <https://www.niccy.org/media/3142/niccy-advice-paper-potential-impact-of-brexit-on-children-young-people-july-2018.pdf>

²⁸ Children's Law Centre (2017) *Consultation with Children and Young People on Brexit*. Available at: <http://www.childrenslawcentre.org.uk/index.php/component/zoo/item/bbc-broadcast-appeal-for-clc-copy-2-copy-3> ; NI Youth Forum submission to Children's Law Centre, September 2020

²⁹ Brexit Law NI, *The New UK-EU Joint Report on Phase 1 of the Negotiations: Preliminary views on the Ireland and Northern Ireland section*, 11 December 2017. Available at: <https://brexitlawni.org/assets/uploads/BrexitLawNI-Analysis-Phase-1-Report-Final-1.pdf>

³⁰ An Taoiseach, Leo Varadkar (2017) *Statement on Brexit Negotiations*, 8 December 2017. Available at: https://merrionstreet.ie/MerrionStreet/en/News-Room/News/Statement_on_Brexit_negotiations_by_the_Taoiseach_Leo_Varadkar_T_D_.html

- How will the UK government ensure that children in Northern Ireland who identify as 'British' retain the same rights entitlements and protections as children identifying as 'Irish' and other EU citizens post Brexit?

As noted, the *Human Rights Act 1998* does not represent the full protection of the ECHR. Provision for a ***Bill of Rights for Northern Ireland***, intended to build on the rights contained within the ECHR by including supplementary rights influenced by international standards and reflecting the particular circumstances of Northern Ireland, was provided for in the 1998 *Belfast/Good Friday Agreement*. This commitment to establishing a framework of human rights to underpin the government institutions established by the Agreement was an important confidence-building measure in a society transitioning from decades of conflict. Based on extensive consultation over a period of 8 years, advice was provided in 2008 by the Northern Ireland Human Rights Commission [NIHRC] to the Secretary of State on the content of a *Bill of Rights for Northern Ireland*.³¹ In December 2009 the UK government published a consultation document which rejected most of the advice provided by the NIHRC on the basis that "the introduction of such rights in Northern Ireland would either be unworkable in practice, or could give rise to unjustified inequalities across the UK."³²

Ironically, Northern Ireland has fallen behind other devolved administrations in relation to children's rights in recent years as Scotland and Wales have used powers within their devolved competencies to give further effect to UNCRC rights.³³ Despite reference to the *Bill of Rights for Northern Ireland* in a series of Agreements, and the CRC's (2016, para7b) recommendation, there has been no progress in achieving this goal. The *New Decade, New Approach* document - outlining the deal reached by the UK and Irish Governments to restore devolved government in Northern Ireland three years after the NI Assembly collapsed in January 2017 - provides for the now functioning Ad Hoc Committee on a Bill

³¹ Available at: <http://www.nihrc.org/uploads/publications/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

³² Northern Ireland Office (2009) *A Bill of Rights for Northern Ireland: Next Steps*, Consultation Paper, para 3.15

³³ See briefings to the Ad Hoc Committee on a Bill of Rights:
Simon Hoffman in relation to Wales: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/simon-hoffman-swansea-university/>
Tobias Lock in relation to Scotland: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/written-briefings/tobias-lock-professor-of-law-at-maynooth-university/>.

On 1st September 2020, the First Minister announced that the Scottish Government would shortly introduce the *UNCRC Incorporation (Scotland) Bill* which will incorporate the UNCRC into Scottish law "fully and directly", to the maximum extent of the Scottish Parliament's powers and be passed before the end of the current parliamentary term. This announcement was made as the Scottish Government launched its *Programme for Government 2020-21*, which stated its commitment to "deliver a revolution in children's rights" through incorporation.

of Rights. However, with no agreed process for delivery of a meaningful set of rights outcomes when the Committee concludes its work, there is concern that the Committee could simply become the latest delaying tactic in a long-running process. As in Scotland and Wales, the Northern Ireland Assembly could take steps to give further effect to international Treaties within its own devolved competencies. In addition, provision was made in the *Belfast/Good Friday Agreement* for a *Bill of Rights for Northern Ireland* to be enacted through Westminster legislation. There is no limit to the powers of Westminster to legislate (as there is for the devolved institutions) so complete incorporation of UN Treaties, including the UNCRC, would be possible through a *Bill of Rights for Northern Ireland*. The Northern Ireland Commissioner for Children and Young People has affirmed: “it is apparent that today’s children and young people are profoundly affected by the ‘particular circumstances’ of Northern Ireland and their rights must be protected within this context”.³⁴

Question:

- When will the UK Government legislate for a *Bill of Rights for Northern Ireland*?

Emergency legislation in response to the COVID-19 pandemic - the *Coronavirus Act 2020* - was particularly significant in relation to health and social care; temporary closure of educational institutions and childcare premises; amendment of the *Education and Libraries (Northern Ireland) Order 1986*; and empowering the Department of Education to make regulations which modify duties in relation to Special Educational Needs [SEN]. Details concerning the impacts of the pandemic and associated emergency legislation are referred to throughout this Report. In August 2020, over 50 organisations made a plea to the Northern Ireland Executive that, in responses to COVID-19, children and young people must be prioritised as much as health and the economy.³⁵

Questions:

- How did the UK and Northern Ireland governments ensure emergency legislation introduced during the COVID-19 pandemic was compliant with international human rights standards?
 - were children’s rights impact assessments undertaken before introducing emergency legislation?
 - were steps taken to ensure no differential adverse impact on children?
 - has emergency legislation, and associated measures, been repealed?

³⁴ NICCY (2020) *Briefing to the NI Assembly Ad-Hoc Committee on the Bill of Rights for Northern Ireland*, June 2020, p2

³⁵ Action for Children et al (2020) *A Vision for Recovery in Northern Ireland. Overarching Principles and Actions*, 7 August 2020

Comprehensive policy and strategy

A consultation was undertaken in 2016/2017 to develop a *Children and Young People's Strategy for Northern Ireland*. Although a cross-Departmental Strategy was published in December 2019, this was described as providing a “strategic framework for improving the well-being of children and young people ... pending the formation of an Executive and the approval and adoption of a Northern Ireland Executive Children and Young People's Strategy”. Despite resumption of the Northern Ireland Assembly in January 2020, the final **Strategy**, Delivery Plan and Indicators have at the time of submission (i.e., December 2020) still not been published but are due **to be considered by the Executive** imminently.

Questions:

- Is the *Children and Young People's Strategy for Northern Ireland* accepted as the delivery mechanism for UNCRC implementation?
- Will the Northern Ireland Executive ensure sufficient resources, timelines and a monitoring/ evaluation framework for implementation of this Strategy and associated action plan?

Coordination

A reorganisation of government departments in Northern Ireland took place in 2016. Prior to this, two junior Ministers within the (then) Office of the First Minister and Deputy Minister held overall responsibility for children. However, despite the CRC's (2016, para 11a) recommendation, in the current situation there is **no Minister with overall responsibility for children**; weakening oversight and accountability for issues relating to children and implementation of children's rights.

Question:

- When will the Northern Ireland Executive appoint a Minister with overall responsibility for children, with the mandate, authority and resources to ensure cross-Departmental UNCRC implementation?

Allocation of resources

Over ten years ago, a study commissioned by Save the Children to analyse public expenditure on children in the UK and at devolved administration level noted that necessary information was not being collected or published in a consistent way over time

or in different jurisdictions.³⁶ It strongly recommended that the UK and devolved administrations take steps to develop children’s budgets, stating: “More transparency is needed to ensure that civil society is aware of budget allocations for children; how they are changing over time; whether money is reaching and benefitting children living in poverty; and whether money is being spent efficiently.” However, regardless of the CRC’s (2016, para 13) recommendation, there is an ongoing **absence of children’s budgetary analysis** and the Northern Ireland Executive has not produced a children’s budget.

Question:

- What measures are being taken to introduce children’s budgeting in Northern Ireland, including to track allocation, use of resources for children, and defined budgetary lines for disadvantaged or vulnerable children who may require affirmative social measures, including in situations of emergency and economic recession?

Data collection

Despite the CRC’s (2016, para 14) recommendation, a **child rights indicator framework** covering all areas of the UNCRC and taking into account the UN High Commissioner for Human Rights publication *Human Rights Indicators* has **not been developed or implemented** in Northern Ireland.³⁷

Question:

- When will the Northern Ireland Executive develop and implement a child rights indicator framework, covering every area of the UNCRC, to be used by all duty bearers?

Independent monitoring

Despite the CRC’s 2016 (para 16a) recommendation, the **legislation underpinning the powers and duties of the Northern Ireland Commissioner for Children and Young People remains unchanged.**

Question:

³⁶ Sefton, T. (2009) *A child’s portion: an analysis of public expenditure on children in the UK*, CASE Report 59, Save the Children

³⁷ The Children and Young People’s Strategic Partnership (2020) has produced a *Northern Ireland UNCRC Monitoring Report* in relation to the 8 outcomes set out in the NI Executive *Children and Young People’s Strategy*. However, this does not include disaggregated data for all areas of the UNCRC or in relation to specific groups (including: girls/boys; LGBT+, BAME, refugees and asylum seekers, LAC, Roma, Travellers, migrant children, disabled children, children living in poverty). See: <https://reports.instantatlas.com/report/view/82f7dbf9e2b64cd0bc3effb41ccb6b0/ni001>

- When will the Northern Ireland Executive amend *The Commissioner for Children and Young People (Northern Ireland) Order 2003* to strengthen the Commissioner's independence, in line with the Paris Principles and CRC General Comment No. 2?

Making the UNCRC widely known to children and adults

Although the UNCRC was ratified by the UK government almost 30 years ago, there are still many professionals (including in the children's sector) who do not fully understand or value the concept of children's rights.³⁸ There is **no comprehensive awareness raising or training about the UNCRC, children's and human rights for professionals working with children.**

The **UNCRC is not a statutory element of the curriculum** in Northern Ireland. Young people have demonstrated limited knowledge about children's rights, the UNCRC and the role of the Northern Ireland Commissioner for Children and Young People. The 2014 *Young Life and Times* survey of 16 year olds in Northern Ireland included a module on children's rights which revealed that only 49% of respondents had heard of the UNCRC, 58% had learnt about children's rights at school, and just 16% had heard of the NI Commissioner for Children and Young People.³⁹ **Nor are the principles and provisions of the Convention integrated into the structures and practices of all schools**, despite the Department for Education's *Circular 2014/14* guidance for Principals and Boards of Governors about how to encourage pupil participation.⁴⁰

Questions:

- When will the Northern Ireland Executive:
 - fund mandatory training on the UNCRC, children's and human rights for professionals working with/for children?
 - include the UNCRC and children's rights in the NI statutory curriculum?
 - ensure that the UNCRC principles are integrated into school policies and practices?

B. DEFINITION OF THE CHILD

Reflecting para 40 of its General Comment No. 20 on implementation of children's rights during adolescence, the CRC (2016, para 20) recommended that the UK Government and devolved administrations raise the minimum age of marriage to 18 years. However, the **legal framework in Northern Ireland enables marriage involving children between the**

³⁸ VOYPIC submission to Children's Law Centre, September 2020

³⁹ See: <https://www.ark.ac.uk/ylt/results/yltrights.html>

⁴⁰ NI Youth Forum (2015) *#Pupil Voice. Making a Difference*, NIYF/ NICCY

ages of 16 and 17 with parental or judicial consent. The Northern Ireland Human Rights Commission [NIHRC] reported that 35 girls and 14 boys married in Northern Ireland during 2018.⁴¹

Question:

- When will the Northern Ireland Executive repeal all legal provisions permitting the marriage of children and increase the minimum age for marriage to 18 years?

C. GENERAL PRINCIPLES

Non-discrimination

In Northern Ireland **proposed legislation on age discrimination**, which excluded children aged under 16 years of age, did not progress while the Assembly was suspended (January 2017 – January 2020) and has **not** been **reintroduced**.

Question:

- When will the Northern Ireland Executive introduce Age Discrimination legislation to protect all children from all forms of discrimination on the grounds of age and ensure effective remedies?

Despite the CRC's (2016, para22c) recommendation, **children continue to experience discrimination and stigmatisation**. Data consistently shows that, for **children living in poverty**, inequality affects their education, housing, social environment and health outcomes. There is a widening gap between the health of children from affluent and deprived backgrounds, with mental health, overweight/obesity and dental decay indicators demonstrating worse outcomes for children from deprived backgrounds.⁴² In 2017, more than two thirds of doctors across the UK who responded to a survey about poverty and child health said that poverty and low income contributed 'very much' to the ill health of the children with whom they worked.⁴³

Disabled children do not access their rights on an equal basis to their non-disabled peers. These inequalities have been highlighted and exacerbated during the response to the COVID-19 pandemic, with differential adverse treatment being experienced by disabled children in access to health, social care and education – essential enabling resources have

⁴¹ Statistics provided by NI Statistics and Research Agency, cited in NI Human Rights Commission (2019) *The 2019 Annual Statement. Human Rights in Northern Ireland*, December 2019, p33

⁴² RCPCH (2020) *State of Child Health 2020*

⁴³ RCPCH (2017) *Poverty and Child Health: Views from the frontline*

been diverted away from children with disabilities, in effect removing their ability to make life choices or be heard in critical decisions affecting them.⁴⁴

In 2018 the Departments of Health and Education in Northern Ireland issued a draft Strategy for **Looked After Children** [LAC] (i.e., children in care) and LAC are a named priority group within the *Outcomes Delivery Plan* developed by civil servants in the absence of a functioning Executive in 2019. However, these children and young people continue to experience significant inequalities. In terms of educational attainment, data for 2017/18 demonstrated that children who had been in care continuously for 12 months or longer were more likely to experience Special Education Needs (23% compared with 5% of the general school population) and just 54% achieved GCSE grades A*-C (compared with 86% of the general school population). They were more likely to be suspended from school – 7% of children in care were suspended compared with 1.4% of the general school population.⁴⁵ Amongst care leavers aged 16-18, 23% had a statement of Special Educational Need (compared with 5% of the general school population), 31% left school with no qualifications (compared with a NI average of 0.6%), 27% achieved 5 GCSEs grade A*-C (compared with a NI average of 85%); 17% were unemployed - 13% were economically inactive because of sickness/disabilities, 4% due to caring or parental responsibilities.⁴⁶ 35% of care leavers aged 19+ were not involved in education, training or employment (compared with 8% of 16-24 year olds in NI). In addition, many experience housing instability, including living in unstable accommodation and homelessness.⁴⁷ Looked after children are also over-represented throughout the criminal justice system, from receipt of cautions and convictions to detention in custody. Amongst children in care aged 10 and over on 30 September 2018, 6% had been cautioned or convicted of an offence while in care during 2017/18 (7% of boys, 5% of girls), with a higher prevalence amongst older children (14% of those aged 16 and over).⁴⁸

In Northern Ireland over seven thousand children and young people are being educated through the medium of Irish in pre-school, primary, secondary education and youth services, many of whom are being raised with Irish as their first language in the home. However, issues faced by young **Irish language speakers** include difficulties accessing

⁴⁴ CLC submission to Children's Law Centre, October 2020

⁴⁵ Department of Health (2019) *Children in Care in Northern Ireland 2017-2018*, Statistical Bulletin, 12 September 2019, p30-36

⁴⁶ Department of Health (2018) *Northern Ireland Care Leavers 2017/18*, 7 December 2018

⁴⁷ Include Youth submission to Children's Law Centre, September 2020; Include Youth response to *NICCY Corporate Plan 2020-2023*, p14-15. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>

⁴⁸ Department of Health (2019) *Children in Care in Northern Ireland 2017/2018*, Statistical Bulletin, 12 September 2019, p38

services and resources, correspondence, limited visibility of the language as well as prejudice and discrimination towards the language.⁴⁹ Concern has been raised that public use and promotion of Irish continues to be politically resisted by UK, devolved and local governments.⁵⁰ The 2006 *St Andrews Agreement* stated that the Government would “introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language”. The subsequent *Northern Ireland (St Andrews Agreement) Act 2007* added a new section [28D] to the *Northern Ireland Act 1998* establishing a legal obligation on the Northern Ireland Executive to adopt a strategy setting out how it proposed to enhance and protect the development of the Irish language. Ten years later, a Belfast High Court Judge ruled that the Executive had failed in its duty to adopt an Irish language strategy.⁵¹ In the 2020 *New Decade, New Approach Agreement* by the UK and Irish Governments, established to resume devolved government in Northern Ireland after a three year suspension, it was agreed that there would be no stand-alone Irish Language Act but the *Northern Ireland Act 1998* would be amended with policies implemented to grant official status to both the Irish language and Ulster Scots language. In its latest report regarding UK compliance with its undertakings under the *European Charter for Regional or Minority Languages*, the Council of Europe Committee of Experts’ recommendations for immediate action included: “adopt a comprehensive law and a strategy on the promotion of Irish in Northern Ireland; provide the basic and further training for a sufficient number of teachers teaching in Irish”.⁵²

The **Roma** community is “routinely subjected to verbal and physical abuse and faces multiple discrimination, from barriers in accessing schools, housing and healthcare to restricted employment opportunities”.⁵³ Exiting the EU is likely to have significant impacts on Roma, particularly in relation to the application process for ‘settled’ status. An

⁴⁹ Conradh na Gaeilge submission to Children’s Law Centre, September 2020; NIHRC (2018) Submission to the Committee of Experts of the European Charter for Regional and Minority Languages. Available at: https://www.nihrc.org/uploads/publications/NIHRC_Submission_to_COMEX_May_2018.pdf

⁵⁰ See: Committee on the Administration of Justice and Ulster University (2019) *Local Councils, Obligations and the Irish Language: A Framework for Compliance*. Available at: <https://caj.org.uk/wp-content/uploads/2018/10/Local-councils-obligations-the-Irish-language.pdf>;

⁵¹ See: <https://judiciaryni.uk/sites/judiciary/files/decisions/Conradh%20Na%20Gaeilge%27s%20Application%20and%20In%20the%20Matter%20of%20a%20Failure%20by%20the%20Executive%20Committee%20of%20the%20Northern%20Ireland%20Assembly%20to%20Comply%20with%20its%20Duty%20Pursuant%20to%20Section%2028D%20of%20the%20Northern%20Ireland%20Act%201998.pdf>

⁵² Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680948544

⁵³ CFNI (2014), cited in NI Housing Executive (2019) *The Roma Community in Northern Ireland: A Scoping Review*, August 2019, p14

organisation working with **Traveller children** in Northern Ireland has highlighted on-going failure to protect their rights to health, education, an adequate standard of living and protection from violence.⁵⁴ Travellers are the ethnic minority experiencing the poorest outcomes in relation to poverty, with high rates of unemployment and educational underachievement. The Northern Ireland Human Rights Commission's investigation of Traveller accommodation "provides evidence of the inertia and decline in Traveller accommodation and services".⁵⁵ The Housing Executive acknowledges that "Irish Travellers are amongst the most disadvantaged and marginalised people living in Northern Ireland and can face multiple deprivations in relation to health and well-being, housing, education, racism, mortality and discrimination".⁵⁶ An organisation working with families who are **migrants and children from minority ethnic communities** has noted that bi-lingual children are often actively discouraged or prohibited from using their mother tongue in school and youth work settings (usually because other children and adults, with whom they are not conversing, do not understand what they are saying), as well as inadequate protection from actual or threatened violence within and outside the home environment.⁵⁷

Although asylum matters remain under the remit of the UK Home Office, education, housing and health are all devolved. A 2019 survey of 70 **asylum seekers** in Belfast found that 88% of the asylum-seeking parents who responded could not afford basic food, clothing and expenditure such as transport, recreational activities and school trips. They reported feeling that inability to fully participate in school and community life had a harmful effect on their children. The school uniform grant administered by the Education Authority was insufficient. Over one third indicated that they had been forced to change their child's school as a result of being relocated to different accommodation by the Home Office, causing disruption to the child's routine and relationships, and impeding integration. These families were forced to pay for the child's new school uniform as the uniform grant is only available once a year. In addition, fear of enforced relocation prevented children and their families from settling. Three quarters of parents reported that they experienced anxiety, isolation, depression or felt they could not cope with daily activities.⁵⁸ In research with Syrian **refugee children**, they identified language barriers,

⁵⁴ STEP submission to Children's Law Centre, September 2020

⁵⁵ NIHRC (2018) "*Out of Sight, Out of Mind*": *Travellers' Accommodation in Northern Ireland*. Executive Summary, p3

⁵⁶ NI Housing Executive (2020) *Draft 2020-2025 Irish Traveller Accommodation Strategy*, p4

⁵⁷ STEP submission to Children's Law Centre, September 2020

⁵⁸ Housing4All (2019) *A Prison Without Walls. Asylum, Migration and Human Rights*, PPR, June 2019

shyness, racism and not feeling a sense of acceptance in their local communities as barriers to cross-cultural friendships and social participation.⁵⁹

LGBT children and young people experience prejudice and discrimination in relation to their sexual orientation and/or gender identity. In a 2016 survey of LGBT young people in Northern Ireland, 73% of respondents reported that they had personal experience of verbal abuse, 22% reported physical abuse, as a result of their sexual orientation/ gender identity. In questions concerning life at home, 50% had experienced homophobic or transphobic attitudes from family members, compelling 26% to find accommodation elsewhere. In addition to negative responses in school, LGBT young people experienced homophobic attitudes displayed by staff and young people, as well as the privileging of heterosexual relationships, in youth work organisations.⁶⁰ In terms of ‘gender’ identities, as opposed to ‘sexual’ identities, there is growing awareness that some children are born intersex (although there is considerable statistical variation in relation to the prevalence of this condition). The number of people identifying as ‘transgender’ is also increasing, although it is not clear whether the condition is becoming more prevalent or this is the result of growing awareness about transgender identity. Children whose personal sense of gender identity differs from the physical presentation of their bodies face severe emotional and psychological challenges which may begin in infancy and deepen as they reach puberty. Failure to understand their experience has a profound impact on all aspects of their lives,⁶¹ particularly in educational environments.⁶² The key issues and challenges faced by transgender children in school include binary-gender classification and language/use of names.⁶³ Transgender people report high levels of experienced prejudice and harassment.⁶⁴

Questions:

- What measures are being taken by the Northern Ireland Executive to:

⁵⁹ Robertson, A. (2020) ‘A New Life for Me’. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo’s NI

⁶⁰ Neill, G. and Meehan, D. (2017) *Still Shouting. The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend/ Youth Action, p14, p24

⁶¹ Focus – The Identity Trust submission to Children’s Law Centre, September 2020

⁶² McBride, R-S. and Schubotz, D. (2017) Living a fairy tale: the educational experiences of transgender and gender non-conforming youth in Northern Ireland, *Child Care in Practice*, Vol. 23, Issue 3, DOI: [10.1080/13575279.2017.1299112](https://doi.org/10.1080/13575279.2017.1299112)

⁶³ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p6

⁶⁴ Neill, G. and McAlister, S. (2019) *The Missing T: Baseline Attitudes Towards Transgender People in Northern Ireland*, ARK Research Update 128, p4

- strengthen awareness of, and prevent, discrimination experienced by specific groups including: children living in poverty; disabled children; Looked After Children and care leavers; Irish language speakers; Roma; Travellers; migrants; children belonging to minority ethnic groups; asylum seeking and refugee children; LGBT+ children?
- implement and resource programmes to support disadvantaged/vulnerable children and ensure they do not face inequalities in education, training, employment, health, accommodation?
- ensure all discrimination against children is effectively addressed?

Best interests of the child

The ‘best interests’ principle is still not reflected in the majority of Northern Ireland legislation. Even when the principle is included in law, this does not necessarily impact on practice. For example, Section 98 of the *Justice (Northern Ireland) Act 2015* inserted new wording into Section 53(3) of the *Justice (NI) Act 2002* which “compels all those working in the youth justice system to take account of the best interests of children with whom they are working as a primary consideration”. However, issues raised in the ‘Special Protection Measures: Administration of juvenile justice’ section of this Report demonstrate that this has not led to rights-based practice prioritizing the best interests of children in conflict with the law.

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - ensure that the ‘best interests’ principle is consistently interpreted and applied in all legislative, administrative, judicial proceedings and decisions, policies and programmes that impact on children?
 - develop and implement guidance for duty bearers for determining the best interests of the child and giving this due weight as a primary consideration?

Right to life, survival and development

Contrary to consistent CRC (2008, para 29; 2016, para 28b) recommendations, **legislation to establish an independent Panel to review child deaths** (including in custody, care and mental healthcare institutions) **has not been implemented**. All other parts of the UK have similar mechanisms in place. Under Sections 7(1b) and 3(5) of the *Safeguarding Board (Northern Ireland) Act 2011*, the Safeguarding Board for Northern Ireland [SBNI] is required to establish processes to review child deaths. However, the Department of Health has not commenced Regulations to enable the Board to carry out this statutory role despite strong advocacy to ensure proper reporting and learning to reduce preventable deaths as well as

recommendations from an independent review of the SBNI,⁶⁵ and an Inquiry into hyponatraemia-related deaths.⁶⁶

Questions:

- Can the Northern Ireland Executive:
 - explain why the establishment of a process to review child deaths remains outstanding, despite being in law for over 9 years?
 - provide a clear timescale for the implementation of a Child Death Review Panel?

Respect for the views of the child

Lack of child participation in legislation and policy development, service planning and delivery continues. UK and Northern Ireland Governments have excluded children from major policy decisions, such as those concerning Brexit or planning for/ responses to COVID-19. In addition to expressing a range of concerns about the implications of Brexit for travel and trade, identity, health and education, freedom of movement, security and funding, young people have argued that issues surrounding Brexit should be taught in schools, political parties and the media should produce age-appropriate literature about the implications of Brexit, and formal procedures should be established to inform children/ young people as well as engage them in debate and enable their voices to be heard.⁶⁷ Children and young people have also reported a lack of involvement in decisions affecting them, including: in the planning and delivery of child-friendly health and children’s services,⁶⁸ within educational policy and practice as well as in decisions about family proceedings and alternative care.⁶⁹

Question:

- What measures have the Northern Ireland Executive taken to ensure that children’s participation informs legislation, policy, service development/delivery/evaluation, including in relation to COVID-19-?

⁶⁵ Jay, A. and Somers, K. (2016) *A Review of the Safeguarding Board for Northern Ireland [SBNI]*, Recommendation 6

⁶⁶ O’Hara, J. (2018) *The Inquiry into Hyponatraemia-Related Deaths*, Recommendation 88

⁶⁷ NI Youth Forum, and Royal College of Paediatrics and Child Health [RCPCH], submissions to Children’s Law Centre, September 2020

⁶⁸ RCPCH &Us (2020) Voice bank: <https://www.rcpch.ac.uk/topic/children-young-people-voice>
RCPCH (2020) *Reimagining the future of paediatric care post-COVID-19*

⁶⁹ VOYPIC ‘More Than a Meeting’ Project, VOYPIC submission to Children’s Law Centre, September 2020; The Fostering Network submission to Children’s Law Centre, September 2020

After many years of lobbying by child and youth organisations, on 22 July 2020 the Northern Ireland Assembly Commission announced its **plans to introduce a Youth Assembly**. Organisations have sought assurances that development of this initiative will be informed by consultation with children/ young people and build on the recommendations made in the 2011 *Towards a Youth Assembly for Northern Ireland* report.⁷⁰ At a local level, only two of Northern Ireland's eleven Councils have established Shadow Youth Councils.

Question:

- How will the Northern Ireland Executive ensure the Youth Assembly provides a structure for meaningful participation of children, including younger and disadvantaged or vulnerable children, in the development of laws, policies and services?

D. CIVIL RIGHTS AND FREEDOMS

Nationality

There has been a **failure to ensure protection for the self-identity and citizenship of EU immigrant children who have been taken into care**. This has included failure to secure, retain or update the child's passport or residency which can impact on their right to access further and higher education or their right to work, since they have no proof of EU citizenship. Non-EU children in care may be deported as young adults to a country about which they know little, if anything, where they cannot speak the language and have no concept of belonging or shared identity.

Furthermore, **failure to provide culturally appropriate alternative care** includes migrant children not being able to retain their mother tongue when they are placed in English-speaking foster families or residential care in Northern Ireland. Lack of knowledge or understanding can also lead to failure of alternative care providers to respect cultural and religious practices observed by the child's biological family.⁷¹

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - guarantee the right of EU migrant children who are LAC to relevant documents proving their self-identity and citizenship?
 - provide culturally appropriate alternative care for migrant children?

⁷⁰ NI Youth Forum submission to Children's Law Centre, September 2020

⁷¹ STEP submission to Children's Law Centre, September 2020

Freedom of thought, conscience and religion

Compulsory worship continues in Northern Ireland schools. Despite the CRC's (2016, para 36) recommendation it is still the case that, under Article 21 of the *Education and Libraries (Northern Ireland) Order 1986*, the school day in every grant-aided school must include collective worship and no action has been taken to permit pupils to withdraw from these sessions. Unlike in England and Wales, there is no legal requirement that school worship has a distinctly Christian character. But, given the 'faith-informed'⁷² nature of the Northern Ireland education system (including the faith-based composition of Boards of Governors), this is invariably how the law is understood. By treating Christian worship as the default, the current system favours one faith perspective over other religious and non-religious beliefs, presupposing that children will participate in religious activities unless their parents opt them out. This not only undermines the freedom of conscience of pupils and families who are not aware of the right to withdraw, but also indirectly requires those who do exercise this option to reveal information about what they believe in a way that could breach their right to privacy.

No action has been taken to permit pupils to withdraw from compulsory worship. Parents have a legal right to withdraw their children from collective worship - ignoring the fact that, under both the *Human Rights Act 1998* and UNCRC Article 14, children also have the right to freedom of religion or belief. Failing to give even those aged over 16 the option to opt out of collective worship fails to enable children to exercise their 'Gillick competence' in a manner that is 'consistent with' their 'evolving capacities' (established in European case law, reflected in UNCRC Articles 12 and 14, and repeatedly endorsed by the UK Parliament's Joint Committee on Human Rights⁷³).⁷⁴ Even when parents in Northern Ireland request an exemption, the process of withdrawal is often difficult and children are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship.⁷⁵

⁷² Milliken, M (2019) *Religion and Education*, Transforming Education, Briefing Paper 2, p3. Available at: https://www.ulster.ac.uk/data/assets/pdf_file/0003/476076/transforming-education-02-Religion-and-Education.pdf

⁷³ Joint Committee on Human Rights: *Legislative Scrutiny: Thirteenth Progress Report, Twenty-fifth Report of Session 2005-06*, paras 2.1-2.6. Available at: <https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>; *Legislative Scrutiny: Education and Skills Bill, Nineteenth Report of Session 2007-08*, paras 1.40-1.45. Available at: <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>; *Legislative Scrutiny: Children, Schools and Families Bill; other Bills, Eighth Report of Session 2009-10*, paras 1.30-1.40. Available at: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

⁷⁴ Sixth-form pupils in England and Wales already have the legal right to withdraw themselves from worship, although this has not been extended to younger, sufficiently mature pupils.

⁷⁵ Erwin, A. (2019) 'Non-religious couple in legal challenge over Northern Ireland school religious teaching', *Belfast Telegraph*, 19 November 2019. Available at: <https://www.belfasttelegraph.co.uk/news/northern->

Questions:

- When will the Northern Ireland Executive:
 - repeal the requirement for schools to provide collective worship, replacing it with non-discriminating assemblies?
 - give children the right to withdraw from compulsory attendance at collective worship in school?
 - ensure meaningful educational alternatives for children whose parents have withdrawn them from collective worship, guaranteeing their spiritual, moral, social, and cultural development is not disadvantaged?

Freedom of association and peaceful assembly

The CRC (2008, para 35; 2016, para 37a) has consistently raised concern about the **use of ‘mosquito devices’ to disperse gatherings of children and young people in public spaces** where they are legally entitled to be, but this **has not been prohibited**. Given that the high-pitched sound emitted by these devices can only be heard by children and young people, their use clearly demonstrates age discrimination and hostility toward this specific group on the part of those who use them. Deployment of these devices infringes UNCRC Articles 2, 3, 12, 15, 19 and 31. In 2010, the Parliamentary Assembly of the Council of Europe found use of acoustic devices to disperse children and young people to be a disproportionate interference with their rights under Article 8 of the ECHR (which includes the right to respect for physical integrity). Their use may also interfere with ECHR Article 11 (the right to freedom of peaceful assembly) and the use of acoustic pain may be a breach of ECHR Article 3 (the right to freedom from degrading treatment).

Question:

- When will the Northern Ireland Executive prohibit the use of acoustic devices in public spaces to disperse gatherings of children?

Right to privacy

The use of ‘ordinary’ (i.e. non-terrorist) **stop and search powers** by the Police Service of Northern Ireland [PSNI] is governed by its *Code of Practice A*, which states that practice must be in compliance with UNCRC Article 3. These ordinary powers mainly include stop and search based on the legal test of ‘reasonable suspicion’ through the *Police and Criminal Evidence (Northern Ireland) Order 1989* and the *Misuse of Drugs Act 1971*. Yet figures demonstrate that the PSNI are using stop and search at a higher rate per 1000 of the

ireland/non-christian-couple-in-legal-challenge-over-northern-ireland-school-religious-teaching-38706408.html

population than every other police service in the UK except the Metropolitan Police Service in London and Merseyside Police in Liverpool (approximately 13 stops per 1000 compared with 5 per 1000 in England and Wales), with one of the lowest 'outcome' rates (arrests) in the UK at just 6%. In Northern Ireland, between 2010/11 and 2018/19 c.35,000 under-18s were officially recorded as subject to use of this power, with 15-17 year old males four times more likely to be stopped and searched proportional to numbers in the population.⁷⁶ In the 2017 *Young Life and Times Survey* of 16 year olds, 69% of those who had direct stop and search experience had been given no clear reason for being stopped and only 41% were searched when stopped. In 88% of direct stop and search experiences PSNI officers failed to provide identifying details, 90% of respondents stated that no details were recorded on an electronic device and no receipt or record of the encounter were provided. Yet 57% had their name and address recorded in the Officer's notebook, suggesting informal use of stop and search as a form of 'warning'.⁷⁷

Consultations about policing with children and young people have highlighted negative experiences of being stopped and searched, a factor affecting the level of confidence they hold in the police. While some reported that negative stop and search incidents led to additional charges, others reported inconsistent experience of Officers' communication when providing a rationale for the 'stop and search' and the individual's rights within this process. Young people feel targeted and victimised by PSNI use of these powers. They consider that their age, appearance, location and family history lead to them being targeted. The attention they receive from the police, including being questioned or searched on the street, has a subsequent effect on how young people are viewed by the communities in which they live.⁷⁸ Analysis of statistics and young people's accounts indicate that **the legal test of reasonable suspicion is not being applied (or misapplied), records are not being properly kept, and the stop and search power is being used as a form of coercive control.** In 2019, the Independent Reviewer of the Justice and Security Act noted that concerns expressed by and on behalf of young people included: young people being stopped and searched in disproportionately high numbers; vulnerable and marginalised

⁷⁶ Topping, J. (2018) Policy Briefing for the NI Executive Knowledge Exchange Seminar Series. Available at: <https://kess.org.uk/2018/05/17/dr-john-topping-qub-police-stop-search-powers-understanding-nature-extent-adversarial-contact-psni-public/>

⁷⁷ Topping, J. and Schubotz, D. (2018) *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK Research Update Number 120, May 2018

⁷⁸ Include Youth consultations. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-psni-service-instruction-bwv-september-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-comments-on-draft-psni-children-and-young-people-strategy-october-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-engagement-with-young-people-on-local-policing-review-november-2018.pdf> <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-draft-northern-ireland-policing-plan-2020-2025.pdf>

children being targeted; and police officers being patronising, rude and disrespectful during encounters.⁷⁹ Concerns noted by the independent Inspectorate of police, fire and rescue services in 2020 related to: inconsistencies in recording and sampling of records; inconsistencies in training; the PSNI's communication approach, especially with young people; recording of data about the community background of individuals; and gaps in forms of external scrutiny, including by young people.⁸⁰ The principles of the UNCRC, particularly Articles 2 and 3, are evidently not being integrated into the operational delivery of PSNI stop and search powers.

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - end the disproportionate use of stop and search against children?
 - ensure police accountability, including compliance with the UNCRC, in PSNI use of stop and search powers against children?

Section 44 of the *Youth and Criminal Evidence Act 1999* contains pre-charge reporting restrictions prohibiting the disclosure of material which “is likely to lead members of the public to identify” a person who is the subject of criminal investigation. Although the power to commence S.44 was devolved to Northern Ireland in 2010, no active consideration has been given to doing so.⁸¹ This means that there is **no statutory protection of anonymity for children who have been arrested and not yet charged**, some of whom may ultimately never be charged. In England and Wales, the *Anonymity (Arrested Persons) Bill*, prohibiting the “publication of certain information regarding persons who have been arrested *until they have been charged with an offence*” (emphasis added), is awaiting its second reading in the House of Lords. If passed, adults in such circumstances will be in a more protected position than children in Northern Ireland. **The right to privacy for the children of alleged offenders is also an issue of concern.** An organisation working with the families of those in conflict with the law has highlighted the impact of news outlets using specific information

⁷⁹ Seymour, D. (2019) *Eleventh Report of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007*, March 2019

⁸⁰ HMICFRS (2020) *The Police Service of Northern Ireland. An inspection of how well the service treats its workforce and the people of Northern Ireland*, p11-13. Available at: <https://www.justiceinspectrates.gov.uk/hmicfrs/wp-content/uploads/psni-inspection-how-well-service-treats-workforce-and-people.pdf>

⁸¹ See: *Re JKL (a Minor)* [2016] NIQB 99 Colton J, a case concerning a 15 year old with Asperger's syndrome who was arrested and interviewed by the PSNI as a suspect in an alleged cyber-crime involving the 'hacking' of customer details retained by a telecommunication company, who was released on bail but whose details were reported in the media.

(such as the name of the street or housing development) regarding arrested adults who are parents, with significant consequences for the children.⁸²

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - reform legislation to ensure that children who are arrested have the right to anonymity?
 - implement measures to ensure the right to privacy for the children of alleged offenders?

A. VIOLENCE AGAINST CHILDREN

Torture and other cruel or degrading treatment or punishment

Despite the CRC's (2016, para 40a) recommendation that use of electrical discharge weapons (such as Tasers), Attenuating Energy Projectiles [AEPs] and any other harmful devices on children should be prohibited, this has not occurred.

CED [Conductive Energy Devices] (i.e., **Tasers**) **have been drawn and fired at children in Northern Ireland**. Between 1 January 2017 and 30 June 2020, Tasers were used on 25 children aged 17 and under by the PSNI.⁸³ This included the Taser being 'fired' at one child, 'red dotted' at eighteen, and 'drawn' at six.⁸⁴ Of particular concern is that in two of the recorded incidents (involving children aged 10 and 14 respectively) the given reason for use was 'Accidental'. Despite 18 reported fatalities after a Taser was discharged against individuals by police in the UK between 2006 and 2018,⁸⁵ the PSNI classifies Tasers as 'less lethal' weapons with a lower test for deployment than for plastic bullets [AEPs]. Seventeen people - including 9 children - were killed by plastic and rubber bullets in Northern Ireland during the conflict and it is impossible to accurately report the number of children who were injured.

⁸² For example, in the case of a child whose mother had been arrested, an article in the local newspaper mentioned their name and the cul-de-sac in which they lived. This left the family vulnerable and the child being targeted in school. The child subsequently stopped attending school for an extended period. The charges against their mother were later dropped, and there was no conviction: NIACRO submission to Children's Law Centre, September 2020

⁸³ Information provided in response to a Freedom of Information request by journalist Peter Moor, November 2020.

⁸⁴ Categories of Taser use include 'Fired' - discharged with a live cartridge installed; 'Red dotted' - not fired, but deliberately aimed and then partially activated so that a red laser dot is placed on the person; 'Drawn' - drawing of a Taser in circumstances where any person would reasonably perceive the action as a use of force: Cooper, L. (2020) *Children's Rights and Policing: Tasers and children's rights*, CRAE, p3

⁸⁵ See: <https://www.amnesty.org.uk/press-releases/uk-public-should-resist-drum-beat-calls-all-police-carry-taser>

The PSNI continues to use AEPs in public order situations when children are present. AEPs are not used in any other UK jurisdiction. The **police have also used CS Spray against children** including, in 2016, in a children’s home.^{86 87}

Provided with extraordinary powers as part of a response to the Coronavirus outbreak, the PSNI introduced **use of ‘spit and bite guards’** - known as ‘spit hoods’ - as a ‘health and safety’ response to COVID-19, despite the absence of evidence that they afford protection to police officers and warnings that the process of fitting the hood and ensuing struggle was likely to generate aerosol particles and thus exacerbate risk of transmission.⁸⁸ PSNI Guidance on the use of spit and bite guards makes it clear that they could be used on children as young as 10 years old. Between their introduction on 27 March and 30 June 2020 they have been used on at least two children,⁸⁹ potentially breaching UNCRC Articles 3, 6, 19 and 37 as well as CRC General Comments No. 13 and No. 24. A number of organisations have raised concerns about the potentially dangerous impacts of spit hoods, calling for their use to be ceased.⁹⁰ Prior to their introduction in Northern Ireland, no consultation was conducted with children or the children’s rights sector to assess impact of their use on children and young people. Concerns raised by the Northern Ireland Commissioner for Children and Young People, Amnesty International, the Children’s Law Centre, Include Youth, the Committee on the Administration of Justice and other organisations within the children’s and human rights sectors about use of spit and bite guards on children include: their non-compliance with the UNCRC and ECHR, failure to impact assess their use, contradiction with PSNI safeguarding policies and trauma-

⁸⁶ See: <https://policeombudsman.org/Media-Releases/2016/CS-spray-use-against-juveniles-justified-during-Ba>

⁸⁷ PSNI ‘use of force’ figures include use of AEP, Taser, Baton, CS Spray, PAVA Spray, Firearm, Dog. According to information provided to Children’s Law Centre (29.9.20), there were 1,438 reports of use of force involving an individual aged under 18 in 2019/20, equating to 10.5% of all use of force reports.

⁸⁸ Amnesty International (2020) *The case against the use of spit hoods in response to Covid-19*, 5 November 2020. Available at: <https://www.amnesty.org.uk/blogs/belfast-and-beyond/case-against-use-spit-hoods-response-covid-19-0>

⁸⁹ NI Policing Board (2020) *Report on the Thematic Review of the Policing Response to COVID-19*, 12 November 2020, p81

⁹⁰ See: <https://www.amnesty.org.uk/press-releases/northern-ireland-police-spit-hoods-may-increase-risks-spread-covid-19-psni-should>;

<https://redress.org/wp-content/uploads/2019/05/UK-Implementation-of-UNCAT-REDRESS-March2019-Web.pdf>

<https://yjlc.uk/wp-content/uploads/2020/04/CRAE-POLICING-SPITHOODS-PRINT.pdf>

<https://www.iccl.ie/news/cra-spit-hoods-fly-in-face-of-progressive-youth-strategy/>

<http://www.crae.org.uk/news/crae-responds-to-metropolitan-police-announcement-on-spit-hoods/>

<https://www.cypnow.co.uk/News/article/concerns-over-use-of-potentially-fatal-spit-hoods-on-children>

informed practice, lack of evidence to support need for/ the effectiveness of their use, potential dangers and adverse effects (including breathing restriction, trauma, emotional distress, degradation and dehumanisation). A Thematic Review of the policing response to COVID-19 recommended that spit and bite guards should be “phased out as soon as possible”, with officers instead provided with the necessary Personal Protection Equipment, and that their use should “cease by 31st December 2020”.⁹¹ However, this review stated that the PSNI should provide further evidence, complete a public consultation exercise and consider the criteria/ guidance for the use of spit and bite guards, submitting this information to the Policing Board so that the Board can give its view about their use to the Chief Constable. The implication is that they could be re-introduced.

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - prohibit the use of Tasers, AEPs, CS spray and other harmful devices on children, in compliance with international human rights standards?
 - prohibit the use of spit and bite guards on children at any time, in any circumstances?

Corporal punishment

Despite repeated recommendations by the CRC (1995; 2002; 2008; 2016, para 41a) for the UK to prohibit all corporal punishment in the family, the position in Northern Ireland remains unchanged and **there are no plans to repeal** Article 2 of the *Law Reform (Miscellaneous Provisions) (NI) Order 2006* which provides for **the legal defence of ‘reasonable chastisement’**. Regardless of compelling international evidence that physical punishment is ineffective in improving children’s behaviour and, in fact, has an adverse impact on children’s well-being,⁹² adults can still legally assault a child in Northern Ireland.

Questions:

- When will the Northern Ireland Executive abolish corporal punishment through repeal of the defence of ‘reasonable chastisement’?
- What has the Northern Ireland Executive done to promote positive, non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity?

⁹¹ NI Policing Board (2020) *Report on the Thematic Review of the Policing Response to COVID-19*, 12 November 2020, p12

⁹² Gershoff, E.T. and Grogan-Kaylor, A. (2016). Spanking and child outcomes: old controversies and new meta-analyses. *Journal of Family Psychology*, Vol.30, Issue 4, pp453-469

Violence, abuse and neglect

Rates of children on the child protection register in Northern Ireland remain higher than in other UK jurisdictions - 52.7 per 10,000 population under 18 (compared to 45 in Wales, 44 in England and 25 in Scotland) - **and the numbers are increasing**. According to quarterly child protection statistics, 2,323 children were on the child protection register at the end of June 2020 (compared with 2,134 at the same time last year).⁹³ While remaining high, the number of child protection referrals made between March and June fell sharply, from 795 for the quarter ending March 2020, to 629 in the quarter ending June 2020. There is concern that this reflects children in need not being identified during COVID-19 lockdown due to their lack of contact with services (including as a result of Department of Health COVID-19 emergency legislation which reduced the protections afforded to children)⁹⁴ rather than a genuine decrease in need. Vulnerable children require targeted support to ensure they have a healthy and happy childhood. This is hindered by the lack of routine health data collection on child protection. Official figures underestimate the true prevalence of child maltreatment, as it is often under-reported to child protection agencies. **Better, more comprehensive data on child protection is required.**

In addition, children and young people have highlighted **need for interventions aimed at supporting families to protect children while helping them stay together**, rather than removing children.⁹⁵

Lack of effective protection for children who use social media and access online information are matters of concern generally. However, the COVID-19 pandemic has heightened these concerns as not only are more children online for more of the time but also they are more dependent on digital technology to conduct a wider variety of activities. The Department of Education launched a new 'Safer Schools' app in an effort to help keep children and young people safe as they spend more time online during the pandemic. As a result of this increased use and dependency, those who wish to harm children online have greater opportunity to do so. Risks created by the design of digital services are also magnified. The two main issues are: (i) exposure of children to cyberbullying, pornographic material, sexting, peer pressure, self-harm/suicide, online gambling, and (ii) the low age of consent (13 years) to their personal data being processed. A Joint Committee of the House of Commons and House of Lords report: *Right to Privacy (Article 8) and the Digital Revolution* queried whether a child aged 13 can give informed consent to their personal

⁹³ See: <https://www.health-ni.gov.uk/publications/quarterly-child-protection-statistics-northern-ireland-april-june-2020>

⁹⁴ Children's Law Centre submission re *Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) Regulations (NI) 2020*

⁹⁵ RCPCH submission to Children's Law Centre, September 2020

data being processed, including how that consent is obtained online, and whether parents are in a position to give informed consent for children younger than 13 years.⁹⁶ On 12 February 2020 the Westminster government published an Initial Consultation Response to its April 2019 *Online Harms White Paper*.⁹⁷ The online protections intended by the government include an Age Appropriate Design Code, age verification of online pornography, and a statutory duty of care for online platforms.⁹⁸ However, the *Online Harms Bill* has yet to be introduced and it is unclear what, if any, legislation Northern Ireland will introduce.

Questions:

- What measures have the Northern Ireland Executive taken to:
 - combat the abuse and neglect of children?
 - allocate requisite funding and resources to ensure that all vulnerable children receive timely and adequate support to protect them from abuse and neglect?
 - enhance systematic health data collection concerning child protection and ensure routine recording and sharing of information, and referral where appropriate, are embedded across Health and Social Care Services?
 - Introduce legislation, plus resource, implement, monitor and review the effectiveness of its *e-Safety Strategy*?

Contrary to the CRC (2016, para 43b) recommendation, **data collection and support for child victims of domestic abuse has not been strengthened**. Regional data on the number of children experiencing domestic abuse is not published and is therefore unknown, resulting in children's experiences being invisible. There are reports of a growing number of domestic violence incidents across Northern Ireland, many of which directly or indirectly involve children - the PSNI reported 18,796 domestic abuse crimes over the 12 months from July 2019 to June 2020, an increase of 2,203 (13.3%) on the previous 12 months and the second highest number recorded in a 12-month period since 2004/05.⁹⁹ Concerns have been expressed about children's increased vulnerability and reduced options for support if experiencing domestic violence during the COVID-19 pandemic, especially during periods of 'lockdown'.

⁹⁶ House of Commons and House of Lords Joint Committee on Human Rights (2019) *Third Report of Session 2019*, 30 October 2019

⁹⁷ See: <https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>. The Northern Ireland Executive published its own consultation document in March 2019: *Keeping children and young people safe online: an e-Safety Strategy and Three Year Action Plan for Northern Ireland 2019-2022*

⁹⁸ See: 5Rights Foundation (2020) *Home Office preparedness for Covid-19 (online harms)*, May 2020

⁹⁹ See: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/domestic-abuse-statistics/2020-21/q1/domestic-abuse-bulletin-jun -20.pdf>

Levels of Government funding for this issue in Northern Ireland are difficult to determine and there is no statutory obligation on public authorities to commission specialist domestic abuse services (such as Children’s Independent Domestic Violence Advisors, as in England) providing emotional and practical support to help children process their experiences, develop an understanding of healthy relationships, improve their health and safety.¹⁰⁰

In the *Domestic Abuse and Family Proceedings Bill* progressing through the Northern Ireland Assembly, while child aggravators are contained in the Bill, **children are not treated as victims of domestic abuse in their own right**. Although the Council of Europe Convention on preventing and combating violence against women and domestic violence [Istanbul Convention] was signed by the UK Government on in June 2012, it is yet to be ratified by the UK. This means that there is no provision for protection against ‘coercive control’ (Article 33), which is to be provided through the Bill – the earliest data that a measure criminalizing intentional conduct which seriously impairs a person’s psychological integrity through coercion or threats will come into force in Northern Ireland is 2021.¹⁰¹

Questions:

- Will the Northern Ireland Executive detail:
 - its plans and timeframe for improving disaggregated data collection regarding child victims of domestic violence?
 - measures taken to ensure provision of appropriate support for child victims of domestic violence?
 - why children were not included as victims of domestic abuse in their own right in recent *Domestic Abuse and Family Proceedings* legislation?

Sexual exploitation and abuse

Despite the CRC’s (2016, para 45b) recommendation, there are serious **concerns about current arrangements and practices regarding the prevention and detection of, and responses to, child sexual abuse**. The majority of reported sexual offences continue to be committed against children - according to PSNI statistics for 2018/19, 3,547 sexual offences were reported and 2,041 of these were against children under 18.¹⁰² Research shows that under-reporting remains prevalent.¹⁰³ High attrition and low conviction rates for sexual offences are a persistent feature of the justice system in Northern Ireland. The Child Care

¹⁰⁰ See: CAADA (2014) *In Plain Sight: Effective help for children exposed to domestic abuse*.

¹⁰¹ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, December 2020

¹⁰² See: PSNI (2019) *Trends in Police Reported Crime in Northern Ireland 1998/99 to 2018/19*.

¹⁰³ NPSCC estimates that for every child on a child protection plan or register another eight experience maltreatment or abuse. See: Bentley, H. et al (2017) *How safe are our children?* London: NSPCC

Centre, a multi-disciplinary unit which specialises in the investigation of child sexual abuse and provision of therapy in Belfast, recorded that less than 5% of cases where they believed children had been sexually abused had been subject to charges by the NI Public Prosecution Service. PSNI figures show that the charge or summons rate for rape offences (where the victim was either a child or adult) for 2017/18 was 5.5%.¹⁰⁴ Although the UK Government ratified the *Lanzarote Convention* in 2018,¹⁰⁵ grave concerns about the treatment and re-traumatisation of child victims by the criminal justice system were highlighted in Judge Gillen's 2019 review of the law and procedures in relation to serious sexual offences in Northern Ireland and a 2020 inspection of how the criminal justice system responds to child sexual exploitation.¹⁰⁶ These reviews documented inordinate delays; lack of advocacy and access to therapeutic intervention; inconsistent application of special measures, including a failure to introduce pre-recorded cross-examination (also in contravention of the CRC's (2016, para 81) recommendation to introduce pre-recorded video interviews of child victims and witnesses as evidence in court). Both reflected positively on the implementation of a multidisciplinary and interagency Barnahus (Child House)¹⁰⁷ system to tackle child sexual abuse and exploitation in Northern Ireland, and this was a strategic priority in the Department of Justice's Gillen Review Implementation Plan.¹⁰⁸

Online child sexual abuse has increased in scale and complexity. Children are groomed and coerced into sending self-generated imagery, and child abuse imagery is freely shared.

¹⁰⁴ See: Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*, p462

¹⁰⁵ The *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* - the Lanzarote Convention - takes account of the UNCRC. Article 30 requires that signatories: take all necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child; that a protective approach towards victims is adopted; that investigations and criminal proceedings do not aggravate the trauma experienced by the child; that the criminal justice response is followed by assistance where appropriate and; importantly, that investigations and proceedings involving children are treated as a priority and carried out without any unjustified delay. Article 35 in regard to interviews with a child requires that all measures are in place to ensure that these are undertaken without unjustified delay; occur in premises designated or adapted for this purpose with professionals trained for this purpose; limit the number of interviews; ensure children are accompanied by legal representative or adult of their choice; and that interviews are videotaped and this is accepted as evidence.

¹⁰⁶ Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*; Criminal Justice Inspection Northern Ireland (2020) *Child Sexual Exploitation in Northern Ireland: An inspection of how the criminal justice system responds to child sexual exploitation in Northern Ireland*

¹⁰⁷ See: Council of Europe (2018) *Protection of children against sexual exploitation and abuse: Child friendly, multidisciplinary and interagency response inspired by the Barnahus model*; Haldorsson, O.L. (2017) *European Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*, Promise Project

¹⁰⁸ See: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/the-gillen-review-implementation-plan.PDF>

Police data suggests that over 10,000 online child sex crimes were recorded across the UK in 2019/20.¹⁰⁹ In Northern Ireland during this period, 13% of police recorded sexual crime against children had an online element.¹¹⁰ Globally, internet usage has spiked during the Coronavirus pandemic,¹¹¹ resulting in increased risk of online harm and technology-facilitated abuse.¹¹² The UK Government must act immediately to introduce protective and regulatory measures to detect and disrupt child online abuse, as proposed in the *Online Harms White Paper*. The Northern Ireland Executive must publish, and closely monitor the impact of, the cross-departmental *e-Safety Strategy*.

In spite of a clear recommendation by the CRC (2016, para 45), **implementation of the 2014 Marshall Inquiry: *Child Sexual Exploitation in Northern Ireland* recommendations remains outstanding**. Over the intervening six-year period, four rounds of progress reports have been published. Serious concerns relating to full implementation of the Inquiry recommendations have been expressed by the Northern Ireland Commissioner for Children and Young People in 2018,¹¹³ the Gillen Review in 2019,¹¹⁴ and the Criminal Justice Inspectorate in 2020.¹¹⁵

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - develop comprehensive services to support children who are victims, or at risk of, sexual exploitation and abuse?
 - strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse?
 - grant effective remedies to child victims of sexual exploitation and abuse?
 - ensure full implementation and monitoring of the 2014 Marshall Inquiry recommendations?

¹⁰⁹ The NSPCC sent Freedom of Information requests to all police forces in England, Wales, Northern Ireland and the Channel Islands asking for the number of sexual offences against under 18-year-olds that had a cyber-flag attached to them between 1 April 2019 and 31 March 2020.

¹¹⁰ PSNI data provided to NSPCC reported that 265 of the total 2,082 recorded sexual offences against under-18s in 2019/20 had a cyber-flag assigned to them.

¹¹¹ UNICEF et al (2020) *Coronavirus Disease (COVID-19) and its implications for protecting children online*

¹¹² Europol (2020) *Catching the virus cybercrime, disinformation and the COVID-19 pandemic*

¹¹³ NICCY (2018) *Reflections on Government Child Sexual Exploitation Progress Reports (Third and Fourth Composite Reports)*

¹¹⁴ Sir John Gillen (2019) *Report into the law and procedures in serious sexual offences in Northern Ireland*

¹¹⁵ Criminal Justice Inspection Northern Ireland (2020) *Child Sexual Exploitation in Northern Ireland: An inspection of how the criminal justice system responds to child sexual exploitation in Northern Ireland*

Freedom of the child from all forms of violence

As a society transitioning from conflict, a number of specific circumstances pertain in Northern Ireland which have an impact on the safety of children and young people. Despite the CRC's (2016, para 48c) recommendation, **threats, intimidation, exiling and physical attacks against young people accused of 'anti-social behaviour' by paramilitary organisations continue**, particularly in economically deprived areas associated with high levels of conflict-related violence.¹¹⁶ Lack of disaggregated data collection and monitoring means that the real extent of this issue is under-estimated. PSNI statistics for the year January to December 2019 show that there were 67 recorded casualties of 'paramilitary-style' assaults, of which 5 were aged under 18.¹¹⁷ An additional issue is Loyalist paramilitary involvement in racist violence and intimidation.¹¹⁸

During consultations, young people in both Republican and Loyalist communities have confirmed reports of activity by non-state forces, with recruitment to paramilitary organisations often occurring through coercion or in lieu of drug debts.¹¹⁹ Research with 16-25 year olds in three different locations found that the most marginalised young people, with complex lives and unaddressed needs, are at most risk of paramilitary violence and exploitation.¹²⁰ In addition to young people actually being assaulted, the media has highlighted the trauma experienced by other children who witness paramilitary style

¹¹⁶ McAlister, S., Scraton, P. and Haydon, D. (2009) *Childhood in Transition. Experiencing Marginalisation and Conflict in Northern Ireland*. QUB, Prince's Trust and Save the Children;
McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1

¹¹⁷ PSNI (2020) *Police Recorded Security Situation Statistics. 1 January 2019 to 31 December 2019*, p1. Available at: <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/security-situation-statistics/2019/december/security-situation-statistics-to-december-2019.pdf>

¹¹⁸ Winters, R. (2020) Racist intimidation in the Village in south Belfast "going on for years", *The Detail*, 26 May 2020. Available at: <https://www.thedetail.tv/articles/racist-intimidation-in-the-village-in-south-belfast-been-going-on-for-years>

¹¹⁹ Include Youth consultations. See:

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>;

<http://www.includeyouth.org/mgmt/resources/include-youth-engagement-with-young-people-on-local-policing-review-november-2018.pdf>;

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-children-and-young-peoples-strategy-2017-2027-de-final.docx>

<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-draft-northern-ireland-policing-plan-2020-2025.pdf>

¹²⁰ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1, p8

attacks.¹²¹ Some individuals and families are also excluded from their communities as a result of paramilitary intimidation. In a submission to the UN Committee Against Torture in 2019, the Northern Ireland Commissioner for Children and Young People called on the UK and Northern Ireland governments to continue to work on addressing the role of ‘paramilitary organisations’ in the lives of children and young people.¹²²

Question:

- What measures are being taken by the Northern Ireland Executive to protect children from assaults, intimidation, and racist attacks by paramilitary organisations?

F. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family environment

Lack of a Childcare Strategy and government funding for childcare are ongoing issues. Despite the CRCs (2016, para 51) recommendation, Northern Ireland remains the only UK jurisdiction without a Childcare Strategy and legislative underpinning to provide childcare services to all who need them. It has been five years since a draft Childcare Strategy was produced for consultation and a new Strategy, which reflects changes in provision of family support and is fit for purpose, is long overdue. The 2019 *Northern Ireland Childcare Survey* with parents and childcare providers found that: the average cost of a full-time childcare place is £166 per week/ £8,632 per year, which equates to 35% of the median household income before housing costs; 41% of parents (50% of lone parents) are using means other than their income - such as savings, loans and/or credit cards - to pay their childcare bill; 50% of parents (63% of lone parents) report spending more than 20% of their income on childcare, with more than 1 in 10 lone parent households spending over half their income on childcare.¹²³

The majority of parents consider there is a **lack of sufficient, affordable childcare** in their area. Families struggle to afford the childcare they need, with many experiencing financial hardship as a result. Lone parents experience greater challenges in accessing and affording necessary childcare, leaving families financially insecure and at risk of, or experiencing, in-work poverty. The current childcare infrastructure can present a barrier to getting into work and career progression, particularly for women who have caring responsibilities. When the cost of childcare reaches or exceeds a parent’s income, some make the decision

¹²¹ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland-teenager-shot-in-legs-surrendered-to-armed-attackers-when-he-heard-his-terrified-little-sister-cry-31003876.html>

¹²² Available at: <https://www.niccy.org/media/3278/childrens-commissioners-uncat-joint-submission-march-2019.pdf>

¹²³ Available at: <https://www.employersforchildcare.org/report/northern-ireland-childcare-survey-2019/>

to leave work altogether. Almost three quarters of childcare providers responding to the survey reported an increase in their expenditure in the past year, with only 29% reporting an increase in income. Many reported making a loss or just breaking even. This is not sustainable; investment is required to support provision of high quality, affordable childcare. The childcare system clearly requires fundamental and urgent reform.

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - develop and implement a comprehensive, fully costed Childcare Strategy underpinned by rights-based legislation?
 - ensure that all Northern Ireland families can access affordable, high quality childcare, protecting the child’s right to development without discrimination?

A number of situations currently undermine the child’s right to maintain a relationship and contact with both parents when their parents have separated. Separating parents in Northern Ireland continue to default to the adversarial legal system for contact or residency orders. Many re-visit the Family Court, particularly when the parent with whom the child resides is considered in contempt of court by the other parent. Family Proceedings Court statistics for 2019-2020 indicate an increase in applications for contact, the majority (65%) involving children aged under 8.¹²⁴ High-conflict parental separation with estrangement from one parent can have a significant negative impact on children. An organisation providing early intervention mediation reports that the majority of first callers are fathers who want to maintain a relationship with their child. Given the child’s right to maintain personal relations and direct contact with both parents on a regular basis, unless this is contrary to the child’s best interests, provision to support children and help parents share parental responsibilities is vital. Government and statutory agencies promote early intervention, particularly with regard to child development, education, safety and family support. The *Children’s Services Cooperation (Northern Ireland) Act 2015* was hailed as a tool that would encourage more joined-up policy and focused funding. Yet **funding for family mediation** as an alternative to the Court system is **minimal**. Provision of cross-departmental funding is required for independent family mediation providers to divert parents from the courts and into early intervention mediation which focuses parents’ attention on the needs of the child and improved access, rather than on ‘winning’ or ‘losing’ a court case. Not only would this reduce mediation waiting lists (which can encourage parents to resort back to the court), but also it is likely to reduce government spending on other services in the long term.¹²⁵

¹²⁴ Family Mediation NI submission to Children’s Law Centre, September 2020

¹²⁵ Family Mediation NI submission to Children’s Law Centre, September 2020

Another organisation has raised the issue of parents refusing mental health support as a result of concerns about the potential negative impact on determinations about their ‘fitness to parent’ or future contact with their child. An additional concern is that **some children of non-resident parents have had contact disrupted or stopped during the COVID-19 pandemic**, with lack of ‘normal’ court proceedings making it difficult for them to seek recourse when contact arrangements have been breached.¹²⁶

Questions:

- What measures are being implemented by the Northern Ireland Executive to:
 - raise awareness of the benefits of separated parents co-parenting, based on the best interests of their children?
 - ensure children’s right to maintain personal relations and direct contact with both parents when their parents separate, providing there is no risk to the child, including during emergencies (e.g. the Coronavirus pandemic)?

Children deprived of a family environment

Northern Ireland legislation and regulations concerning adoption and foster care remain outdated. Despite the CRC’s (2016, para 53g) recommendation, and the fact that it was consulted on in 2017, the *Adoption and Children (NI) Bill* remains in draft form. Current legislation is therefore over 30 years old. It is anticipated that new legislation would introduce a range of legislative means for adoption and fostering more closely aligned with modern family life. It would also place the GEM [Going the Extra Mile] Scheme (allowing children to stay with foster carers up to age 21) on a statutory basis, providing continued stability which can help them complete their education and gradually gain independence. Foster care in Northern Ireland is still governed by 1996 regulations. Although new regulations were consulted on in 2015, these were not approved and also remain in draft. Had they received assent, they would have triggered the development of minimum standards for foster care and an inspection process to ensure that foster care provision meets the assessed needs of children.¹²⁷

Questions:

- When will the Northern Ireland Executive enact:
 - the *Adoption and Children (NI) Bill*?
 - revised Foster Care regulations?

¹²⁶ Parenting NI submission to Children’s Law Centre, September 2020

¹²⁷ The Fostering Network submission to Children’s Law Centre, September 2020

The number and type of care services outsourced to private, for-profit, companies in other jurisdictions has increased. An organization working with care experienced children has raised concerns that, should Northern Ireland implement this strategy, **the quality of care services may not be prioritized when for-profit companies are faced with pressure from shareholders to return a profit.**¹²⁸

Question:

- What has the Northern Ireland Executive done to develop and implement minimum standards prioritising the best interest of the child to ensure statutory and independent care providers, including for-profit companies, deliver appropriate care?

A major concern in Northern Ireland is the **need to resource appropriate alternative care for children, with a variety of placement options to meet children's needs.** Social care statistics demonstrate that the number of children in need, and in care, has risen annually since 2017.¹²⁹ The number in care, on the child protection register or referred to social services has been steadily rising since August 2020 (ie during the Coronavirus pandemic).¹³⁰ There is concern that social services may not be able to recruit and retain adequate numbers of foster carers to meet this increasing need (particularly in relation to teenagers and sibling groups), leading to increased use of unregulated placements. Also necessary is adequate early intervention for those at the edge of care or in need.¹³¹

Lack of participation in the planning and review of their care has been reported by many children who do not feel comfortable attending review meetings, particularly younger children who are often either not included or invited to attend. According to Department of Health statistics, 57% (1,371) children in care for 12 months or longer were invited to attend their latest statutory review during 2017/18. Of these, 30% attended, 47% did not attend but sent their views in writing and 11% did not attend but briefed an advocate to speak on their behalf. Of the 43% (1,050) not invited to attend, this was reportedly because 79% were considered too young to understand and fully participate in the process, 3% could not engage due to the level of their disability, while 3% did not want to participate.¹³² For organisations working with care experienced children, key areas where children's

¹²⁸ VOYPIC submission to Children's Law Centre, September 2020

¹²⁹ Department of Health (2019) *Children's Social Care Statistics for Northern Ireland 2018/19*, 10 October 2019, p10

¹³⁰ Department of Health (2020) *Northern Ireland Children's Social Services Data during COVID-19*, 16 September 2020

¹³¹ The Fostering Network submission to Children's Law Centre, September 2020

¹³² Department of Health (2019) *Children in Care in Northern Ireland 2017-2018*, Statistical Bulletin, 12 September 2019, p22

voices need to be more consistently encouraged, included and listened to are: about their placements, within their reviews, at end of placement reviews, about their relationships with social care staff and the services they receive.¹³³

The **transition from care** can be a daunting experience and many - particularly those seeking to access education, training or employment - need a range of support to help them make this transition successfully in ways which enable them to reach their full potential and adequately prepare for adulthood.¹³⁴ A sizeable cohort continue to experience multiple moves, often within a short space of time, including placement in a range of unsuitable accommodation that does not meet their specific needs. Timely access to appropriate accommodation is key to providing care experienced young people with stability.¹³⁵

Questions:

- What measures have the Northern Ireland Executive taken to ensure:
 - appropriate resourcing of children’s social care, including early intervention to support families at the edges of care and recruitment of foster carers?
 - meaningful participation of care experienced children in decisions affecting their lives?
 - adequate and appropriate support for children in and leaving care, including access to education/training/employment and timely provision of appropriate accommodation?

The CRC (2016, para 53d) recommended that **secure accommodation which deprives children of their liberty** in Northern Ireland should only be used as a measure of last resort and for the shortest possible period of time, with development of alternatives to secure accommodation. Many individuals placed in secure accommodation have also experienced a period of time in custody, or the regional mental health hospital, or both.¹³⁶ They are usually vulnerable young people with complex needs.¹³⁷ Consulted in August 2020 about care issues, a group of young people expressed concerns about use of secure care,

¹³³ VOPIIC and The Fostering Network submissions to Children’s Law Centre, September 2020

¹³⁴ VOYPIC submission to Children’s Law Centre, September 2020; Include Youth (2018) *Response to the Department of Health consultation on the Strategy for Looked After Children: Improving Children’s Lives*. Available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-improving-childrens-lives-strategy-for-looked-after-children-july-2018.pdf>

¹³⁵ VOYPIC submission to Children’s Law Centre, September 2020

¹³⁶ Archibald, D. (2018) *Review of Regional Facilities for Children and Young People*, Department of Health, p57

¹³⁷ Haydon, D. (2016) *Promoting and Protecting the Rights of Young People who Experience Secure Care in Northern Ireland*, Children’s Law Centre

suggesting that it merely “puts a lid on them for a while” and doesn’t help children.¹³⁸ Adequate plans are not always in place to ensure consistency of support to individuals when they leave secure care and return to the community.¹³⁹

Changes being undertaken jointly by the Departments of Health and Justice aim to combine Juvenile Justice and Secure Accommodation on the same campus, retaining the use of secure accommodation. Placement will be under Article 44, *Children (NI) Order 1995*, via a secure placement panel. The secure placement panel process engages Article 6 ECHR. Young people participate in a pre-panel process, but they do not participate in the panel hearing. Nor do they have legal representation during this process. In this context, the process is not Article 6 compliant. Concerns about the proposed changes focus on the process for placing children, including those with mental health needs, and the fact that they are based on institutionalisation rather than provision of specialised, community-based support. United Nations *Guidelines for the Alternative Care of Children*,¹⁴⁰ envisage that states should refrain from institutionalizing children who are in need of care, protection, education, rehabilitation or treatment. Reinforcing these Guidelines, the 2019 *Global Study on Children Deprived of Liberty* recommended: “States shall develop and implement a strategy for progressive deinstitutionalization which includes significant investments in family and community-based support and services. States should prioritise a closure of large scale institutions and avoid the creation of new institutions”.¹⁴¹

Question:

- What measures have the Northern Ireland Executive taken to ensure alternatives to secure accommodation which deprives children of their liberty, including appropriate community-based support for vulnerable children with complex needs?

Children of incarcerated parents

Children of incarcerated parents should be able to enjoy the right to maintain personal relations and direct contact while separated from their parents, provided this is in the child’s best interests. An organisation working to maintain family links has raised awareness about the importance of parents in custody being involved in decisions about their children’s education and care. For example, through attending case conferences or

¹³⁸ Include Youth consultation with IY Derry Young People’s Group (August 2020), cited in Include Youth submission to Children’s Law Centre, September 2020

¹³⁹ VOYPIC submission to Children’s Law Centre, September 2020

¹⁴⁰ *United Nations Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010

¹⁴¹ Nowak, M. (2019) *Global Study on Children Deprived of Liberty* Report, A/74/136, 11 July 2019, para 127

meetings with teachers via video link; school reports being sent to parents in prison; longer visits in which parents and children can engage in crafts, play, healthy eating sessions or homework together. In addition to providing more child-centred activities, prison visit scheduling may need to be more flexible so that visiting times do not clash with school routines or children's weekend sport/ interest clubs.¹⁴²

Families are often not promptly assigned a social worker to complete an assessment regarding suitability of contact when a parent enters custody, which can lead to a significant gap in contact. Not only does this have a detrimental impact on the child's relationship with their parent, but also it affects provision of support to prepare the child/family for the incarcerated parent's release from custody and future family dynamics.

Opportunities for children to express their views or concerns about loved ones in custody are affected by access to, or engagement with, NGOs providing family support for prisoners. However, **significant numbers of children with an incarcerated parent are unknown to services and therefore receive no support or advocacy.**¹⁴³

Questions:

- What measures have the Northern Ireland Executive put in place to ensure that:
 - a child can maintain their relationship and contact with an incarcerated parent when there is no court order preventing contact, including during emergencies such as COVID-19?
 - children of incarcerated parents receive appropriate information, support and advocacy?

G. DISABILITY, BASIC HEALTH AND WELFARE

Children with disabilities

To prevent unequal treatment and promote equality of opportunity for disabled children, the Northern Ireland government must, under the statutory equality duty in Section 75 of the *Northern Ireland Act 1998*, when introducing policies consider their impact on disabled children's right to equality of opportunity. However, this is not possible as relevant disaggregated data is not collected. When formulating the *Northern Ireland Disability Strategy 2012-2015*, there was **no baseline data on children with disabilities or long-term**

¹⁴² NIACRO submission to Children's Law Centre, September 2020

¹⁴³ NIACRO submission to Children's Law Centre, September 2020

conditions. A new strategy is currently being formulated and there is still no baseline data, nor a plan to allocate resources for this to be collected.¹⁴⁴

Question:

- What measures have been taken by the Northern Ireland Executive to establish disaggregated baseline data on children with disabilities and long-term conditions to enable discharge of the statutory equality duty under Section 75 *Northern Ireland Act 1998* and so ensure implementation of disabled children's rights?

Young people with learning difficulties and mental health needs experience **limited options when transitioning from children's services to adult services.** Rather than a well-planned process leading to education and day care options reflecting their individual needs, provision is often based on what becomes available. This situation is worsened by differing levels of services in each Health and Social Care Trust, and complications if the child moves from one Trust area to another.¹⁴⁵

According to the *State of Child Health 2020* report, children with long-term conditions are more likely to develop mental health problems and poorer education outcomes. These children should be empowered with self-management tools to control their health conditions as they become adults. This is particularly important as they navigate the transition from child to adult health services.¹⁴⁶

Question:

- What measures have the Northern Ireland Executive put in place to ensure appropriate provision of services for disabled children and those with long-term conditions, based on individual needs, including as they transition from children's services to adult services?

Whilst some progress has been observed at local authority level, the CRC's (2016, para 75b) recommendation regarding play has not been implemented. **Many disabled children are denied their right to play due to a lack of suitable play opportunities and/or attitudinal barriers.** A survey undertaken in 2019 with 424 Northern Ireland families of children with a disability found that, in over half, the child was unable to play as often as they would like. The most significant issues identified by families included: lack of inclusive play equipment; lack of appropriate toilet/changing facilities; the travel distance required to access inclusive play opportunities; and the negative attitudes of other play park users.¹⁴⁷

¹⁴⁴ CLC submission to Children's Law Centre, October 2020

¹⁴⁵ CLC submission to Children's Law Centre, October 2020

¹⁴⁶ RCPCH submission to Children's Law Centre, December 2020

¹⁴⁷ PlayBoard submission to Children's Law Centre, September 2020

Questions:

- What measures have been taken by the Northern Ireland Executive to:
 - address deficiencies in availability of safe, inclusive, accessible spaces for play, leisure and socialising that meet the needs of children of all abilities?
 - address negative attitudes towards children with disabilities within play facilities and more broadly in Northern Ireland?

Health and health services

A recent case in Northern Ireland raised significant questions about **application of the ‘welfare’ principle within healthcare** provision.¹⁴⁸ This concerned the failure of the Health and Social Care Board to fund a private prescription for medicinal cannabis to a child with life-threatening epileptic seizures on the basis that it was contrary to policy to fund private care. The case challenged a blanket approach to policy in circumstances where, notwithstanding Regulation 7(3) *Misuse of Drugs Regulations (Northern Ireland) 2002* (as amended) permits the administration of cannabis-based medication, no doctor was prepared to provide an NHS prescription and yet its administration had been shown to be beneficial by credible senior NHS medical opinion. Brought on the basis of the child’s best interests under the welfare principle in Article 3 of the *Children (Northern Ireland) Order 1995*, it was argued that this should have applied in any decision to follow the policy. The case raised important questions about whether the welfare principle is confined to proceedings in the Family Court and the extent to which ‘upbringing’ should be interpreted to include medical care. It also challenged the extent to which a hard line can be maintained between the funding of publicly and privately delivered healthcare. The case was resolved on a consensual basis, so these issues have yet to be determined.¹⁴⁹

Question:

- Will the Northern Ireland Executive extend the ‘welfare’ principle to the healthcare sector so that this principle will determine the provision of necessary prescription, procedures and care even when these cannot be accessed via publicly delivered healthcare?

Mental health

Despite the CRC’s (2016, para 61a) recommendation that comprehensive, disaggregated data on child mental health is regularly collected, the true scale of poor mental health among children and young people in Northern Ireland is unknown as there is **no regularly**

¹⁴⁸ *Re BC (a Minor)* – Keegan J, September 2020

¹⁴⁹ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, October 2020

available prevalence data. Although the Department of Health commissioned a prevalence survey in 2018, it is understood that this was carried out using one-time transformation funding.¹⁵⁰ A 2020 Youth Wellbeing Prevalence Survey indicates that Northern Ireland has higher levels of mental ill health than any other UK jurisdiction – 1 in 8 (12.6%) of children in Northern Ireland had an emotional disorder such as anxiety or depression compared with 1 in 12 (8.1%) in England.¹⁵¹

Although there have been a number of welcome recent initiatives, including the 2020 *Mental Health Action Plan* and appointment of a ‘Mental Health Champion’, there are still **urgent concerns**. These include: suicide rates which are much higher than in the other UK jurisdictions (17.8 per 100,000 aged 15-24 compared with 8.1 in England, 9.7 in Wales and 15.1 in Scotland);¹⁵² increasing incidence of self-harm; increasing anti-depressant prescription rates for 0-19 year olds; self-reported poor emotional well-being;¹⁵³ eating disorders; low levels of self-esteem; bullying, particularly via social media and other online platforms; increased anxiety, particularly in young children; limited policy and practice in the areas of perinatal and infant mental health;¹⁵⁴ high levels of self harm and suicidal thoughts amongst LGBT young people.¹⁵⁵ Organisations working with young people have reported an increase in the numbers requiring crisis intervention support as well as mental health support, both in emergency and non-emergency situations, where they have been unable to access vital services.¹⁵⁶ In 2018, the Northern Ireland Commissioner for Children and Young People published a comprehensive review of mental health services and support for children: *Still Waiting*,¹⁵⁷ which highlighted a range of issues regarding access to timely and effective mental health support. The system was demonstrably under significant pressure, finding it difficult to respond to the scale of need and complexity of

¹⁵⁰ RCPCH submission to Children’s Law Centre, September 2020

¹⁵¹ Bunting, L. et al (2020) *The Mental Health of Children and Parents in Northern Ireland. Results of the Youth Wellbeing Prevalence Survey*, October 2020, p47

¹⁵² RCPCH (2020) *State of Child Health. Northern Ireland*, p23

¹⁵³ NICCY (2017) *Child and Adolescent Mental Health in Northern Ireland*. Scoping Paper. Available at: <https://www.niccy.org/media/2810/niccy-scoping-paper-mental-health-review-apr-2017.pdf>

¹⁵⁴ National Children’s Bureau submission to Children’s Law Centre, September 2020; NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.ncb.org.uk/sites/default/files/field/attachment/news/Informing%20the%20Development%20of%20an%20Emotional%20Health%20and%20Wellbeing%20Framework..pdf>

¹⁵⁵ Neill, G. and Meehan, D. (2017) *Still Shouting. The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend/ Youth Action, p14

¹⁵⁶ NI Youth Forum submission to Children’s Law Centre, September 2020

¹⁵⁷ Available at: <https://www.niccy.org/media/3114/niccy-still-waiting-report-sept-18-web.pdf>

issues presented by children and young people in a context of chronic under-investment and historical patterns of funding allocation not based on known mental health needs. This affects the availability, accessibility and quality of services provided.

Mental health is a priority issue for children and young people, who have consistently highlighted an urgent need to address the mental health needs of children and young people. The *Elephant in the Room* peer research noted: lack of safe spaces for young people to talk about mental health and receive useful information and/or support; the poor quality of available mental health information, which is inconsistent and unhelpful; little or no mental health education in schools or colleges; stigma which stops young people talking about mental health and contributes to a ‘culture of silence’, making the situation worse.¹⁵⁸ In consultations they have identified: lack of adequate provision; uneven spread of available support, including only one residential adolescent mental health facility with 33 beds which is a long way from the families of many children; time taken to receive medication; the vulnerabilities experienced when transferring from child to adult mental health services and adult provision not being tailored to their age or particular needs.¹⁵⁹ Practitioners agree that mental health is one of the most pressing issues for children and young people, suggesting that the level of poor mental health is under-represented because many do not want to reveal it.

The CRC (2008, para 57; 2016, para 61b) has consistently recommended rigorous investment in Child and Adolescent Mental Health Services [**CAMHS**], which has been significantly under-funded for decades. Although 27% of children and young people identify as having had mental health issues, the CAMHS budget in Northern Ireland is only 9% of the total mental health budget.¹⁶⁰ The rate of admissions to CAMHS is 40 per 100,000 children aged 0-18, the second highest rate in the UK, and referrals to CAMHS increased by 21% between 2014/15 and 2017/18 indicating increased need.¹⁶¹ The Children’s Commissioner’s *Still Waiting* report documented significant issues regarding CAMHS services, including: long waiting times; a postcode lottery in terms of access to services; lack of understanding about services, leading to inappropriate or rejected referrals.

¹⁵⁸ Belfast City Council Youth Forum, NI Youth Forum, Youth@CLC (2018) *Elephant in the Room*. Available at: http://www.niyf.org/wp-content/uploads/2018/12/ELEPHANT-IN-THE-ROOM-A4-V2_.pdf

¹⁵⁹ Include Youth response to the draft *Children and Young People’s Strategy 2017-2027*, available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-children-and-young-peoples-strategy-2017-2027-de-final.docx> and response to the Strategy for Looked After Children: *Improving Children’s Lives*, available at: <http://www.includeyouth.org/mgmt/resources/include-youth-response-to-improving-childrens-lives-strategy-for-looked-after-children-july-2018.pdf>

¹⁶⁰ Freedom of Information requests by Children’s Law Centre

¹⁶¹ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/21-rise-in-children-treated-for-mental-health-issues-in-northern-ireland-37762897.html>

Young people are not positive about the **contribution of schools** to supporting children and young people’s mental health, claiming that many schools are not equipped to deal with individuals experiencing problems and define these as ‘bad behaviour’. The Independent Counselling Service for Schools is at maximum capacity and not statutorily funded in primary schools (which can buy in counselling if required).¹⁶² Lack of confidence, skills and knowledge amongst school and youth services staff to support children with mental health issues has been identified as a key issue.¹⁶³

Questions:

- Will the Northern Ireland Executive:
 - regularly collect disaggregated data on the prevalence of children’s poor mental health?
 - adopt a universal, preventative approach to support positive emotional wellbeing for all children?
 - end age discrimination in the funding of mental health services, properly fund CAMHS and ensure service provision meets need?
 - ensure that children have access to appropriate CAMHS to meet their needs, when required, with particular attention to: younger children; disabled children; children affected by conflict, trauma, abuse and neglect; children living in poverty; children in care; children in contact with the criminal justice system; LGBT+ children; trafficked, refugee and asylum seeking children?
 - fund provision of school-based counselling for all pupils?

The **COVID-19** pandemic and resultant ‘lockdowns’ are having a further detrimental impact on children’s mental health, with support required both during and after the crisis as children and young people experience disruption to many aspects of their lives (including the closure of schools, lack of daily routine, reduced contact with friends and extended family, limited access to health services)¹⁶⁴ as well as COVID-related fear and trauma. The pandemic will have the biggest impact on those who are already the most vulnerable.¹⁶⁵ A UK-wide survey of 1,854 parents and caregivers during lockdown found that 67% of

¹⁶² NCB submission to Children’s Law Centre, September 2020

¹⁶³ NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.ncb.org.uk/sites/default/files/field/attachment/news/Informing%20the%20Development%20of%20an%20Emotional%20Health%20and%20Wellbeing%20Framework..pdf>

¹⁶⁴ HSC (2020) rapid review: *The Mental Health Impact of the COVID-19 Pandemic in Northern Ireland*. Available at: <https://www.health-ni.gov.uk/sites/default/files/publications/health/mh-impact-covid-pandemic.pdf>

¹⁶⁵ Barnardo’s (2020) *New Term, New Challenges, New Opportunities*; Barnardo’s (2020) *Mental Health and Covid-19: In Our Own Words*

respondents had concerns about the long-term impact of COVID-19 on their child's mental health. Among those whose children had received mental health support in the previous three months, 83% felt their condition had deteriorated due to the pandemic and 25% stated that their dependent required support but was no longer able to access it.¹⁶⁶ Although use of audio-visual technology during the first surge of the COVID-19 pandemic was useful, and many young people appreciate this method of receiving care, drawbacks must be acknowledged (eg lack of privacy) and a choice about how to receive care must be available to young people.¹⁶⁷

Question:

- Will the Northern Ireland Executive urgently address, including appropriate resourcing, the impact of the COVID-19 pandemic on children's mental health and wellbeing?

In Northern Ireland, **living in a divided society and the legacy of the conflict** are additional factors affecting young people's mental health. The Commission for Victims and Survivors estimated in 2013 that 30% of Northern Ireland's population could be defined 'victims' or 'survivors' of the conflict (i.e., directly affected by bereavement, physical injury, or trauma); 10% of the population had been bereaved; 39% had experienced a conflict-related incident; and levels of Post-Traumatic Stress Disorder were very high.¹⁶⁸ Transgenerational trauma remains a reality for many children today.¹⁶⁹ In 2014, the *Stormont House Agreement* agreed a bespoke mental trauma service for victims and survivors of the conflict but this has yet to be established. Failure to implement agreements on dealing with the past, or to adhere to international legal obligations under domestic and international law, have had a detrimental impact on families affected by conflict-related violence (particularly violent bereavement). In many families, relatives pass away without resolution leading to outstanding cases of truth and justice being 'passed on' to the next

¹⁶⁶ Young Minds (2020) *Coronavirus: Impact on Young People with Mental Health Needs*. Available at: <https://youngminds.org.uk/about-us/reports/coronavirus-impact-on-young-people-with-mental-health-needs/>

¹⁶⁷ RCPCH &Us (2020) Voice bank; RCPCH (2020) *Reimagining the future of paediatric care post-COVID-19*

¹⁶⁸ *Hansard*, 17 April 2013. Available at: <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2012-2013/april-2013/commission-for-victims-and-survivors/>

¹⁶⁹ O'Neill, S. et al (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, University of Ulster, for the Commission for Victims and Survivors, March 2015; McLaughlin (2016) *Children and Young People Engagement Project. Research Report March 2016*, CVS/ Victims and Survivors Forum

generation. This causes a new and particular inter-generational trauma.¹⁷⁰ In communities where paramilitaries continue to have influence, young people whose alleged ‘anti-social’ behaviour has brought them to the attention of paramilitaries often feel pressured not to speak out or seek help, while worrying that they may still be under threat. Some of those who have received threats or been physically assaulted by paramilitaries report feeling angry, living in constant fear, not leaving their home, and being suicidal.¹⁷¹ Paramilitary attacks are obviously traumatic for children who are victims and/or witnesses.

Questions:

- What measures have been taken by the UK Government and Northern Ireland Executive to:
 - address the specific needs of children experiencing transgenerational trauma as a result of the conflict?
 - ensure the participation of children in processes and programmes to deal with the legacy of the conflict?
 - address the mental health needs of children whose lives are affected by paramilitary threats and/or violence?

The CRC (2016, para 61e) recommended that current mental health legislation should be reviewed to ensure that the best interests of the child are taken into account in cases of mental health treatment of children below the age of 16. However, the ***Mental Capacity Act (NI) 2016*** excludes under-16s from its scope. For this group, the *Mental Health (NI) Order 1986* will be retained with some amendments, despite this Order being deemed by the 2007 *Bamford Review of Mental Health and Learning Disability* to be non-compliant with the *Human Rights Act*. There are further **concerns regarding** the position of **16 and 17-year olds who do fall within the scope of the *Mental Capacity Act*** as they can be deprived of their liberty and the Act allows for parental consent for this, despite the UK Supreme Court ruling that no parent can consent to the deprivation of liberty of their child.

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - address the exclusion of under-16s from the provisions, including protections, of the *Mental Capacity Act (NI) 2016*?

¹⁷⁰ Relatives for Justice (2018) *Response to the Consultation ‘Addressing the Legacy of the Past’*. Available at: <https://relativesforjustice.com/wp-content/uploads/2018/10/Dealing-with-the-Past-Consultation-Doc-Oct-2018-005.pdf>

¹⁷¹ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1

- ensure NI mental health legislation is UNCRC compliant, including complying with the UK Supreme Court ruling in the matter of D (A child) [2019] regarding deprivation of liberty?

The CRC (2016, para 61d) recommended that therapeutic community-based services should be developed for children with mental health conditions. Yet **some children with learning disabilities and co-occurring mental health needs are delayed discharge patients - medically fit to leave, they remain in a children's in-patient facility** for 12-17 year olds, **sometimes for years**. This issue is currently before the court; the challenge involves delayed discharge into a community placement appropriate to their needs. ECHR Articles 3, 5 and 8 are engaged and there is reliance on the UNCRC on the basis that their continued detention after they have been deemed medically fit for discharge constitutes a breach of their rights. The concern is not only that children are detained in an unsuitable setting when they should be discharged to appropriate accommodation, but also that detention may persist until they are no longer children without clear transition arrangements for them as young adults. There is a lack of appropriate accommodation throughout Northern Ireland for children who require support and management due to their mental health or disability. Although policies may exist, they remain aspirational and are not translated into actual action and change. This ignores the fact that the children's rights involved are absolute in nature and the absence of such action and change imposes real suffering and/or long term disadvantage.¹⁷²

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - address delays in discharge from hospital for children with learning disability and co-occurring mental health needs?
 - adequately resource accommodation required to enable children who need supported living to live fulfilling lives outside of hospital?

A case, currently at pre-action stage, is being taken to challenge the **failure to provide a specialist psychiatric in-patient Mother and Baby Unit [MBU]** in Northern Ireland for the applicant to care for her baby while she remains in hospital. Article 3 in relation to mental suffering and Article 8 ECHR are relied on. The case concerns a mother with a history of mental ill-health who was diagnosed with post-partum psychosis. She has both been detailed in hospital under the *Mental Health (Northern Ireland) Order 1986* and admitted as a voluntary patient during which time her young baby has not been able to stay with her or be brought for visits during 'lockdown'. The mother's condition is likely to re-occur in any future pregnancy. This challenge affects the ECHR and UNCRC rights of babies as well as their mothers, since separation at such an early stage of life can impede bonding in

¹⁷² Monye Anyadike-Danes, QC, submission to Children's Law Centre, October 2020

addition to impairing the effectiveness of the mother's treatment and thus the quality of their on-going relationship. Northern Ireland is the only jurisdiction in the UK that does not offer an MBU. The deficiency is well recognized. A report published in October 2017 stated that the Health Minister was committed to reforming hospital and community services and achieving parity of esteem between physical and mental health services, including proposals for a specialised Mother and Baby Unit.¹⁷³ However, nothing was done and a progress report published in January 2018 was silent on the topic of perinatal services and proposals for a MBU.¹⁷⁴ On 9 April 2019 all political parties in Northern Ireland co-signed a 'Consensus Statement' urgently requesting "the commitment of investment and ring-fencing of funds required to ensure women, babies, families and communities get the care and support they need and deserve". To date no MBU has been established, requiring new born and other babies to be separated from their mothers.¹⁷⁵

Question:

- What measures are being taken by the Northern Ireland Executive to provide a specialised Mother and Baby Unit where women who are psychiatric in-patients can care for their babies, and make interim arrangements to ensure babies are not separated from their mothers when it is in both their best interests to be kept together?

Adolescent health

There is limited data about children and young people's alcohol and drug use in Northern Ireland as most surveys or studies tend to concentrate on the adult population. Both young people and practitioners are aware of the **links between drug use and poor mental health**, expressing concern that not enough is being done to tackle the drugs problem or support young people who find themselves struggling with drug misuse. Recent media reports suggest that there is a high correlation between drug/ alcohol misuse and self-harm or suicide attempts by young people.¹⁷⁶ The casework of organisations working with young people indicates that conditions exacerbated by the use of drugs and alcohol are becoming increasingly severe.¹⁷⁷ Many young people targeted in the communities where

¹⁷³ Department of Health (2017) *Health and Wellbeing 2026: Delivering Together, 12 Month Progress Report October 2017*

¹⁷⁴ Department of Health (2018) *Health and Wellbeing 2026: Delivering Together, Appendix A: Latest Position on 18 Actions as at January 2018*

¹⁷⁵ Monye Anyadike-Danes, QC, submission to Children's Law Centre, October 2020

¹⁷⁶ See: <http://www.bbc.co.uk/news/uk-northern-ireland>

¹⁷⁷ CLC submission to Children's Law Centre, September 2020

paramilitaries retain power are either drug users or low level drug dealers. Rather than ridding communities of drugs, young people have argued that paramilitary threats and attacks can lead to increased drug and alcohol use to help them cope with their fear.¹⁷⁸

Many in custody in Northern Ireland's Juvenile Justice Centre [JJC] are vulnerable as the result of complex alcohol, drug and mental health problems.¹⁷⁹ In 2019, the Northern Ireland Audit Office stated that "Better evidence about the prevalence and impact of mental health issues in the criminal justice system is required".¹⁸⁰ In relation to children, Inspection reports have stated that self-harm rates are frequently due to children coming off drugs as they enter custody.¹⁸¹ The JJC has attempted to reduce offending by delivering personal development programmes intended to address underlying social issues (covering topics such as alcohol and drug use, making choices, family relationships, sectarianism, social and life skills, emotions, physical and mental health, citizenship) as well as programmes relating to specific offences for which children were convicted (such as car crime, violence or arson).¹⁸² Continuity of healthcare is vital, especially for those requiring specialist services after release from custody.

There is **no dedicated in-patient facility for children with drug and alcohol issues in Northern Ireland**. The Regional Adolescent CAMHS inpatient unit (a hospital with a capacity of 33 beds, including 2 intensive care beds) is not permitted to treat young people with drug and alcohol related issues unless they have a diagnosable mental health condition. In a consultation in this Unit regarding the *Mental Capacity Act (NI) 2016*, young people were clear that they did not consider the Unit a suitable place for the treatment of young people with drug related problems as this is too disruptive a condition to be treated in a ward with those suffering from mental health issues alone.¹⁸³ Some young people, who do not have a diagnosable mental health issue, meet the criteria for placement in Northern Ireland's Secure Care Centre. Whilst this provides them with a safe environment, it does

¹⁷⁸ McAlister, S., Dwyer, C. and Carr, N. (2018) *Experiencing Paramilitarism: Understanding the Impact of Paramilitaries on Young People in Northern Ireland*, ARK Research Findings, Number 1, p2-3

¹⁷⁹ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p46

¹⁸⁰ NO Audit Office (2019) *Mental health in the criminal justice system*, 14 May 2019, p46

¹⁸¹ CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, May 2015, CJINI/ RQIA/ ETI, p27;
CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p26

¹⁸² CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/ RQIA/ ETI, p35

¹⁸³ CLC submission to Children's Law Centre, September 2020

not give them long term access to the range of services required to address drug and alcohol issues. The Secure Care Centre also deprives children of their liberty.

The power of drug control has not been devolved to the Northern Ireland Assembly. The main legislation currently in force is the *Misuse of Drugs Act 1971*, which does not provide for access to any services by those who have drug-related needs. The gateway into the *Mental Capacity Act (NI) 2016* is a lack of capacity in the individual aged 16 or over. Defined in clause 2 of the Act, “a person lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain”. It does not matter whether the impairment or disturbance is permanent or temporary, or what is the cause of the impairment or disturbance. It is clear that conditions caused by alcohol or drugs fall within this definition and could impair a person’s capacity, bringing them within the remit of the *Mental Capacity Act (NI) 2016*. However, the provisions of this Act apply only to persons aged 16 and over. For those under the age of 16 the *Mental Health (NI) Order 1986* is the principal legislation governing the compulsory detention in hospital for assessment and treatment of a mental health condition. By virtue of Article 3(2) of this Order: “No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs”. Therefore, conditions caused by drugs and alcohol are specifically excluded from the Order - a young person can only be detained in a hospital setting if they are also considered to be suffering from a co-existing mental health disorder. This causes considerable issues for practitioners and those who work with young people as it is often difficult for clinicians to establish if the mental health condition is caused *by* or is the cause *of* drug/ alcohol misuse. Conditions caused by drugs and alcohol need to be legislated for and children’s right to access appropriate clinical health services, including in-patient provision where necessary, ensured.¹⁸⁴

Many **community drug and alcohol services require a direct referral from a healthcare professional** – it is not possible for young people or their families to make a direct referral to statutory services, leading to an over-reliance on services being provided by the community and voluntary sectors.¹⁸⁵

Questions:

- What measures have been taken by the Northern Ireland Executive to:

¹⁸⁴ CLC submission to Children’s Law Centre, September 2020

¹⁸⁵ CLC submission to Children’s Law Centre, September 2020

- determine the prevalence of drug and alcohol use amongst children in Northern Ireland?
- provide adequate and suitable provision for children with drug and alcohol issues, particularly when combined with mental health needs?
- ensure all children with co-occurring mental health conditions and drug/alcohol issues enjoy the same legislative protections as adults?

In 2016, the CRC (2016, para 65b) recommended that meaningful sexual and reproductive health education should be part of the mandatory curriculum for all schools. In Northern Ireland, Relationships and Sexuality Education [RSE] is covered within the statutory curriculum under ‘Personal Development and Mutual Understanding’ in primary schools, ‘Learning for Life and Work’ in post-primary schools. **Beyond the statutory minimum content for RSE schools have flexibility in what they cover**, giving each school the scope to make its own decisions on how best to meet the needs of its pupils. The Department of Education’s 2015 Circular about RSE states that each school is required to develop an RSE policy, based on the ethos of the school, “which is relevant to the lives of pupils today”.¹⁸⁶

The Department of Education Circular states that “best practice” includes “clear linkages and explicit connections” with the “aims, values, ethos, moral and ethical framework” of the school. The teaching guidance and resources provided by the Council for the Curriculum, Examinations and Assessment [CCEA] cover issues including consent, contraception, healthy relationships, internet safety, LGBT matters, social media and self-esteem.¹⁸⁷ However, with respect to ‘sensitive issues’ (such as abortion, same-sex marriage, gender identity, sexual abuse), the CCEA guidance states that “Schools may wish to deal with such issues differently, depending on their distinctive” ethos.¹⁸⁸ Consequently, (particularly in faith-based schools) **important RSE content may be excluded because it does not fit with the school’s ethos**. In addition, RSE taught from a faith-based perspective may be slanted to match the philosophical convictions that underpin a school’s ethos,

¹⁸⁶ Department of Education (2015) *Relationship and Sexuality Education (RSE) Guidance, Circular Number 2015/22*. Available at: https://www.eani.org.uk/sites/default/files/2018-10/cpsss_circular_2015_22.pdf

¹⁸⁷ CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools* (2015). Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Curriculum/Relationships%20and%20Sexuality%20Education%20Guidance%20An%20Update%20for%20Post-Primary%20Schools.pdf>;

CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Primary Schools*. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Resource/Relationships%20and%20Sexuality%20Education%20Guidance%20E2%80%93%20An%20Update%20for%20Primary%20Schools.pdf>

¹⁸⁸ CCEA, ‘Relationships and Sexuality Education (RSE)’. Available at: <https://ccea.org.uk/learning-resources/relationships-and-sexuality-education-rse>, p19

including misleading teaching about the physical or mental impact of abortion or teaching that homosexuality is morally impermissible.¹⁸⁹

Current RSE provision in Northern Ireland is inadequate – a scant approach often fails to connect with the ‘lived reality’ of young people’s lives or to incorporate issues experienced by them on a daily basis, including sexting, family diversity, and LGBT+ relationships. These programmes are influencing how young people understand and conceptualise ‘healthy’ sexual behaviour and relationships. Failure to provide adequate RSE places young people at risk when it comes to negotiating safe relationships. A narrow framework can lead them to seek information elsewhere, often from ill-informed sources, leaving them vulnerable to harmful behaviours.¹⁹⁰ In its latest Concluding Observations to the UK Government, CEDAW recommended that measures are taken to introduce into the school curriculum mandatory, age-appropriate education on sex and reproductive rights, including issues such as gender relations and responsible behavior, as well as implementation of the 2018 House of Commons Women and Equality Committee Report recommendations on sexual harassment of girls in public spaces, including schools.¹⁹¹

Teacher education in relation to RSE is insufficient, translating into poor delivery (particularly for LGBT+ young people).¹⁹² In a 2016 study about the needs and experiences of young people in Northern Ireland identifying as LGBT, 84% of respondents noted they had not received any information or support at school regarding gender identity or sexual orientation.¹⁹³ This was affirmed in another research project about the post-primary experiences of LGBT young people conducted in the same year: 55% of respondents stated that issues about sexual orientation or gender identity had not come up in any of their classes; 38% reported being made to feel uncomfortable through teachers’ using inconsiderate or derogatory language, taking a heteronormative approach, and poor coverage of LGBT issues; 92% indicated that there was insufficient information available in

¹⁸⁹ While LGBT-specific information is often absent from teaching in a variety of schools, this situation was found to be particularly prevalent in schools with a religious ethos in Britain: Bradlow, J. et al (2017) *The experiences of lesbian, gay, bi and trans young people in Britain’s schools in 2017*, Stonewall/ Centre for Family Research, University of Cambridge

¹⁹⁰ Agnew, E. (2018) *A Critical Analysis of the Emergence, Impact and Regulation of ‘Cyberbullying’ and ‘Sexting’ among Young People in Northern Ireland*, Unpublished PhD thesis, Queen’s University Belfast

¹⁹¹ CEDAW (2019) *Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland*, Adopted by the Committee on its 77th session (18 February – 8 March 2019), para 42b and c

¹⁹² Dirk Schubotz (QUB) submission to Children’s Law Centre, September 2020

¹⁹³ Neill, G. and Meehan, D. (2017) *Still Shouting: The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend and Youth Action, p21 Available at: <https://youthcouncilni.org/wp-content/uploads/2017/12/5878-YouthAction-Still-shouting.pdf>

relation to LGBT issues.¹⁹⁴ Young people responding to a survey about RSE in 2019 described current programmes as “unhelpful”, “limited” and “heteronormative”.¹⁹⁵

While there is no legislative provision permitting **parental withdrawal of children from sex education** in Northern Ireland, the CCEA guidance states that schools are allowed to grant such requests **on the basis that “parents or carers have the right to have their children educated in accordance with their wishes”**.¹⁹⁶ Thus, some children are denied their right to access RSE. This is particularly concerning in relation to sexual abuse as an abusive parent could exercise the right to withdraw their child from sex education and, by so doing, prevent the child from receiving adequate safeguarding education. Unlike in England, where pupils who are three terms or less from their 16th birthday may opt themselves into sex education (relationships education is mandatory with no right to withdraw at any stage), there is no right for older pupils in Northern Ireland to request RSE when they are sufficiently mature enough to do so. In Wales, the *Curriculum and Assessment (Wales) Bill 2020* seeks to remove the right to withdraw from RSE entirely, ensuring that all pupils are able to access a comprehensive, objective RSE curriculum irrespective of background or belief.¹⁹⁷

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - ensure all schools are implementing comprehensive RSE programmes, including age-appropriate information about: confidential sexual and reproductive healthcare services; contraceptives; prevention of sexual abuse or exploitation, including sexual bullying; supports available in cases of sexual abuse and exploitation; and sexuality, including that of LGBT+ children?
 - ensure teachers have the knowledge, skills and confidence to deliver age-appropriate RSE?
 - abolish parents’ ability to withdraw their children from RSE and, in the meantime, ensure children who are removed from RSE lessons receive information on relationships and sex?

¹⁹⁴ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p8

¹⁹⁵ Belfast City Council Youth Forum (2019) *Any Use? Young People’s Opinions on Relationship and Sexuality Education*

¹⁹⁶ CCEA (2015) *Relationships and Sexuality Education Guidance: An Update for Primary Schools*, p9. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/Resource/Relationships%20and%20Sexuality%20Education%20Guidance%20%E2%80%93%20An%20Update%20for%20Primary%20Schools.pdf>

¹⁹⁷ Northern Ireland Humanists submission to Children’s Law Centre, September 2020

Since the start of April 2020, young people in Northern Ireland who have an unwanted pregnancy have been able to access **Early Medical Abortion (EMA)** services up to the 10th week of pregnancy. For those under age 16, safeguarding policies are followed. Doctors report that ‘Gillick’ principles¹⁹⁸ have not been an issue since all under 18 year olds seeking abortion have been accompanied by a parent.¹⁹⁹ However, abortion is not available after ten weeks gestation and this has an impact on those who may not realise they are pregnant early enough to access EMA. These young people have been forced to travel to other jurisdictions for an abortion including in the midst of the Coronavirus pandemic, putting them and anyone accompanying them at risk.

Question:

- What measures are being taken by the Northern Ireland Executive to ensure the provision of abortion services which guarantees that no young woman has to travel outside NI to access reproductive health care?

Nutrition

The CRC (2016, paras 67a and b) recommended systematic data collection on food security and nutrition for children, with regular monitoring and assessment of the effectiveness of policies/ programmes to deal with these issues. A range of organisations gave evidence about **food insecurity** and ‘holiday hunger’ at a Stormont event in June 2017.²⁰⁰ Christians Against Poverty highlighted that parents skipping meals and not being able to provide their children with three meals per day are common amongst families living in poverty. Organisations working with families noted that those paying for childcare reported having to cut back on other household expenses to meet childcare costs, including buying less fruit and vegetables or parents going without breakfast or lunch to put food on the table for their children. The scale of the response needed to tackle food insecurity falls far short of the need experienced by children and families, many of whom suffer in silence and behind closed doors.²⁰¹

In terms of ‘**holiday hunger**’, it was suggested at the event that more than 100,000 children on free school meals could be at risk of going without food during school holidays (i.e. more than one in four school age children). The Tressell Trust confirmed a

¹⁹⁸ See: *Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7

¹⁹⁹ Goretta Horgan (Ulster University) submission to Children’s Law Centre, September 2020

²⁰⁰ Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

²⁰¹ Children in Northern Ireland submission to Children’s Law Centre, September 2020

spike in those using foodbanks during the July and August school holidays, with a 17% increase compared with numbers during May and June. Parents from the SPACE project confirmed that financial difficulties are worsened during holidays when some parents have a reduced income because they are on term-time contracts and others (especially lone parents) reduce their hours to care for their children.

Poverty has an impact on nutrition as low income families are likely to be surviving on cheap food which lacks the nutritional elements needed for growing children. In a survey by the Family Fund of 110 parents of children with disabilities, 79% of families responded that they found it difficult to afford healthy food either 'often' or 'sometimes' in the last 12 months, with almost half (46%) having to miss a meal to prioritise feeding their children. The main reason for this was the cost of healthy food options on a budget, especially if a child had special dietary and/or sensory needs and/or food intolerances. Respondents reported seeking cheaper but less healthy/filling food, often because of tiredness and the time needed for other caring responsibilities.²⁰² In December 2019 a local charity warned that more than 20,000 children under 10 years old (an average of two children in every primary class) were "facing Christmas without warmth or fresh food".²⁰³

As elsewhere in the UK, in pre-Covid Northern Ireland the response to rising levels of hunger was led by the community and charity sector rather than the state.²⁰⁴ **During the Coronavirus lockdown, food need became so widespread that official programming was required.** The Department for Communities set up emergency measures, including a weekly food basket scheme initially intended just for the elderly and other people advised to shield. This scheme of 10,400 food parcels was expanded to 18,000 food boxes per week.²⁰⁵ Additional funds of £1.5m were provided to help district councils ensure access to food for those most in need.²⁰⁶ Alongside the Department for Education, the Department for Communities announced that it would make bi-weekly free school meals payments (amounting to £2.70 per day per child for each day the child's school was closed) to families of 97,000 children in receipt of free school meals. At first this was during term time but eventually it was extended to the 2020 summer holidays.²⁰⁷

²⁰² Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

²⁰³ See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/over-20000-northern-ireland-kids-facing-a-cold-and-hungry-christmas-childrens-charity->

²⁰⁴ Participation and the Practice of Rights submission to Children's Law Centre, September 2020

²⁰⁵ See: <https://www.communities-ni.gov.uk/landing-pages/covid-19-service-updates>

²⁰⁶ See: <https://www.communities-ni.gov.uk/landing-pages/covid-19-partner-organisations>

²⁰⁷ See: <https://www.executiveoffice-ni.gov.uk/news/executive-daily-update-initiatives-deal-coronavirus-26-march-2020>

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - systematically collect data to identify root causes of child food insecurity and malnutrition (including during emergencies like the Coronavirus pandemic) to inform policies/programmes?
 - regularly monitor and assess the effectiveness of policies/programmes intended to address food insecurity and malnutrition, including: school meal programmes, food banks, food parcels, emergency measures during the Coronavirus pandemic?
 - ensure food security for every child in Northern Ireland, regardless of immigration status?

Standard of living

The CRC's (2016, para 71a) recommendation regarding the eradication of child poverty has not been addressed. In Northern Ireland, despite targets set in the *Child Poverty Act 2010* to eradicate child poverty by 2020, and a now outdated *Child Poverty Strategy 2016-2019*, **numbers of children living in poverty remain unacceptably high**. With a 5% rise compared with the previous year, 24% of children (107,000) were living in relative income poverty and 21% in absolute poverty during 2018/19 according to Department for Communities data published in May 2020.²⁰⁸ **No new child poverty Strategy has been developed**, despite this being a statutory obligation in the 2010 Act. The Minister with responsibility has instead extended the 2016-19 Strategy to 2022.²⁰⁹

Regressive welfare reforms (which disproportionately affect large families and lone parents),²¹⁰ **have led to unprecedented levels of Universal Credit declarations,²¹¹ the proliferation of food banks, and a 122% rise in the number of food parcels given to children.**²¹² Following a visit to the UK in 2018, the UN Special Rapporteur on extreme poverty and human rights highlighted the issue of food poverty, noting that many of the recent changes to social security support have a disparate impact on children, including

²⁰⁸ Department for Communities (2020) Northern Ireland Poverty Bulletin 2018/19 released, 14 May 2020. Available at: <https://www.communities-ni.gov.uk/news/northern-ireland-poverty-bulletin-201819-released>

²⁰⁹ See: <https://www.communities-ni.gov.uk/news/minster-announces-extension-child-poverty-strategy>

²¹⁰ Portes, J. and Reed, H. (2018) *The cumulative impact of tax and welfare reforms*, Equality and Human Rights Commission

²¹¹ NSPCC (2020) *Isolated and struggling: Social isolation and the risk of child maltreatment, in lockdown and beyond*, p8

²¹² The Tressell Trust (2020) *Summary of findings on the impact of the COVID-19 crisis on food banks*, June 2020. https://www.trusselltrust.org/wp-content/uploads/sites/2/2020/06/APRIL-Data-briefing_external.pdf

how parents are able to feed their children.²¹³ In evidence presented at an event about food insecurity in 2017, 15 of the 28 Locality Planning Groups (involving front-line staff from the statutory, voluntary and community sectors working with families in local areas) reported that families were experiencing the effects of poverty and economic hardship which was affecting their physical, social and mental well-being, with many expressing growing concerns about the impacts of Universal Credit, income tax, housing issues and welfare reform.²¹⁴

Job losses and income instability caused by the Coronavirus pandemic have placed households in acute financial stress. The conditions created by COVID-19 have increased stressors on caregivers, increased child vulnerability, and reduced safeguards - increasing the potential for new and recurring cases of abuse in all its forms. While poverty as an isolated factor does not cause child maltreatment, it can have a significant impact on parenting capacity as it can exacerbate and contribute to parental mental ill health or substance misuse.²¹⁵

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - address the fact that the 2020 target to reduce/eradicate child poverty has not been met?
 - establish clear accountability mechanisms for child poverty eradication including a Strategy beyond 2022, with concrete targets, set timeframes and measurable indicators to identify impacts of poverty and inequalities, plus monitoring and reporting processes?
 - implement policies and practices to better support children living in poverty, including mitigating inequalities in education, housing, and health outcomes?
 - undertake a comprehensive assessment of the cumulative impact of the Coronavirus pandemic and welfare reforms on children and mitigate adverse impacts?

Current Home Office policy leads to **enforced destitution for asylum seekers whose application for asylum has been refused**, with significant ramifications for children. It is rare for people to be granted asylum the first time they apply but approximately half of

²¹³ Alston, P. (2018) *Statement on visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*, London, 16 November 2018, p13. Available at: https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf

²¹⁴ Finlay, E. (2017) *Holiday Hunger Evidence Session*. All Party Group on Children and Young People, CiNI. Available at: http://www.ci-ni.org.uk/DatabaseDocs/nav_1480087_new6383235apgfinafinalreport.pdf

²¹⁵ See: Bywaters et al (2016) *The relationship between poverty, child abuse and neglect: an evidence review*, Joseph Rowntree Foundation

appeals are successful. However, in the interim, refused asylum seekers lose all support, including accommodation, while not being able to either work or access homeless shelters. Although this is a reserved matter in Northern Ireland, access to essential services such as health, care, education and housing are devolved. In Scotland, local authorities have lifted the ban on asylum seekers working and families in acute need are supported to access essential services.²¹⁶

Questions:

- What is the UK Government doing to ensure that children of asylum seekers do not endure severe poverty and periods of enforced destitution?
- Will the Home Office lift the ‘no recourse to public funds’ designation from asylum seekers whose claims have been rejected?
- Will the NI Executive lift the ban on asylum seeking parents working, and ensure that asylum seeking children are able to access essential services?

Despite the CRC’s (2016, para 71e) recommendation, **legislation prohibiting prolonged placement of children in temporary accommodation by public authorities has not been enacted**. In Northern Ireland, 16 and 17 year olds facing homelessness are supposed to be assessed under the UNOCINI [Understanding the Needs of Children in Northern Ireland] framework and the Regional Good Practice Guidance on Meeting the Accommodation Needs of Homeless 16-21 year olds. This places responsibility on social services to provide accommodation and support under the ‘Looked After Child’ system to 16 and 17 year olds who are assessed as being homeless. However, key issues include failure to assess young people in a timely manner and use of unregulated placements such as Bed and Breakfast or hostel accommodation. In addition to the inappropriateness of these placements, the type of supports available often do not meet the complex care and health needs of young people placed in such facilities.²¹⁷ Young people also require provision of appropriate support to sustain tenancies.²¹⁸

Two recent cases²¹⁹ concerned application of the absolute duties of respective Health and Social Care Trusts to provide accommodation to a ‘Looked After Child’ and to a ‘child in need’ under Articles 27 and 17 respectively of the *Children (Northern Ireland) Order 1995*, in particular the extent to which these duties are satisfied by the provision of Bed and Breakfast accommodation (which is an unregulated placement). There was also an issue of

²¹⁶ PPR submission to Children’s Law Centre, September 2020

²¹⁷ CLC submission to Children’s Law Centre, September 2020

²¹⁸ NI Youth Forum submission to Children’s Law Centre, September 2020

²¹⁹ *Re OC (a Minor) and LH (a Minor)* [2018] NIQB 34 - Keegan J

timeframe within which the duties must be discharged, particularly where a child in the youth justice system requires accommodation to secure bail. Article 5 ECHR on the right to liberty and security, and Article 37 of the UNCRC on the detention of a child being used as a measure of last resort and for the shortest appropriate time, were both engaged. The judge noted that Northern Ireland legislation, unlike legislation in England and Wales, has not been amended to provide that a local authority has a duty to provide ‘sufficient accommodation for looked after children’ (emphasis added) and considered the sufficiency duty is “undoubtedly a matter worthy of debate in Northern Ireland when the availability of services and accommodation for children is under the spotlight”. Nevertheless, the judge declined to rule that there was an absolute prohibition on the use of Bed and Breakfast accommodation and to grant specific declaratory relief, on the basis that: (i) the current policy includes clear restrictions upon its use and (ii) that its use should be rare, restricted and heavily monitored.²²⁰ However, subsequently the chair of the RQIA Board (which is responsible for inspecting and monitoring children’s care homes and accommodation) drew attention to the practice of placing children in unregulated accommodation, informing the Board that this “problematic situation” was “verging on crisis”.²²¹

Nor has the CRC’s (2016, para 71f) recommendation that necessary measures are taken to reduce homelessness and progressively guarantee all children stable access to adequate housing been addressed. The Department for Communities reported that, in the first six months of 2020, 2,899 children were classed as statutorily homeless, 25% of whom were aged 0-2.²²² Children and young people have articulated the impacts of living in temporary accommodation, overcrowded conditions, hostels, of sofa surfing and homelessness, on their physical and mental health as well as their ability to learn, socialise and play.²²³ Analysis of Northern Ireland Housing Executive data indicates that **the number of households facing homelessness and housing stress is increasing, as is the number of children in these households**. At the end of December 2019, figures indicated that there were at least 20,021 children under the age of 18 in households on the social housing waiting list (an increase of 5% since March 2018); at least 15,445 under-18s in households in housing stress (an increase of 13% since March 2018); and at least 13,122 under-18s in households with Full Duty Applicant homeless status (an increase of 15% since March

²²⁰ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, October 2020

²²¹ See: Fagan, M. (2019) Rise in use of unregulated B&Bs, hotels and hostels for ‘looked after’ teens, *The Detail*, 9 April 2019

²²² See: <https://www.communities-ni.gov.uk/system/files/publications/communities/ni-homelessness-bulletin-jan-jun-2020.pdf>

²²³ See video made by under-18s from the ‘BuildHomesNow’ housing rights group in Belfast. Available at: <https://www.youtube.com/watch?v=Sj2wMoy4LQo>

2018).²²⁴ Furthermore, social housing in Northern Ireland remains overwhelmingly segregated on the basis of religion. Although housing shortage and need exist within both main communities, these Housing Executive statistics demonstrate that households on the waiting list, in housing stress, or with Full Duty Applicant homeless status are disproportionately prevalent in areas where households are predominantly Catholic.

Questions:

- When will the Northern Ireland Executive:
 - enact legislation prohibiting placement of children by public authorities in temporary and/or unregulated accommodation?
 - address the systemic failure to ensure the rights of homeless children?
 - enforce the duty to provide suitable accommodation for LAC and children in need?
 - reduce homelessness and guarantee all children access to housing that provides physical safety, adequate space, protection against threats to health and structural hazards (including cold, damp, heat, pollution), and is accessible for children with disabilities?
 - address the fact that, according to Housing Executive evidence, housing shortage and children’s housing need are disproportionately prevalent in areas that are predominately Catholic?

Organisations working directly with children and young people are aware of the **significant adverse impacts of lack of internet access and digital poverty**. This affects those who live in rural areas, where internet coverage is patchy at best and connection is often of poor quality with slow or weak broadband speeds, as well as those living in families which do not have the means to pay for internet connection or associated devices. Although disadvantaged by lack of internet access for some time, the COVID-19 lockdown has exacerbated this issue, particularly as children have been expected to access education via the internet and their only way of communicating with teachers has been online. Maintaining relationships with friends and extended family has also been largely through ‘virtual’ forms of communication. Furthermore, young people have reported that they use the internet more than any other means to access advice and/or support.²²⁵ Lack of internet access leading to them not being able to access necessary support is of particular concern in relation to child protection or violation of children’s rights. The digital discrimination experienced by some children, and failure to ensure equality of access to decent,

²²⁴ 2018 figures are from a Freedom of Information response from the NI Housing Executive to PPR (dated 16.7.2018). 2019 figures are from a Freedom of Information response from the Housing Executive to PPR (dated 15.4.2020)

²²⁵ CLC submission to Children’s Law Centre, September 2020

affordable digital connectivity and technology, is a serious breach of children's rights, including: UNCRC Articles 3, 6, 12, 13, 15, 19, 29 and 31.

Questions:

- What measures has the Northern Ireland Executive put in place to ensure that *all* children and young people have access to decent, affordable digital connectivity and technology?

H. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

Inequalities in access to education and educational attainment pertain for specific groups. Despite the CRC's (2016, para 73a) recommendation that efforts to reduce the effects of social background or disabilities on children's achievement in school should be enhanced, a 2020 report by the Centre for Research in Educational Underachievement [CREU] summarises evidence that this remains an issue in Northern Ireland.²²⁶

For **Traveller children**, inequalities span the life course. In terms of education, they are more likely to be excluded from school, have lower school attendance, be the victim of bullying, and leave without qualifications.²²⁷

Roma children generally have limited pre-school experience and many do not speak English when they first attend school. However, they have reported that too much emphasis is placed on learning English at the expense of other subjects, with children being discouraged from speaking their own language in school. Some consider that negative assumptions are made about the ability of Roma children, who are treated differently and given easier work. Many stop attending post-primary school before the school leaving age and few go on to Further Education.²²⁸

Care experienced children and young people have highlighted how negative experiences of mainstream education are exacerbated by learning difficulties not being identified, problems experienced while they are in care not being understood by teachers, a

²²⁶ See: <https://www.stran.ac.uk/research-paper/creu-2020-evidence-summary/>

²²⁷ See: McVeigh, R. and Joyce, C. (2011) *Taskforce on Traveller Education. Report of the Taskforce to the Department of Education*. Available at: https://dera.ioe.ac.uk/13623/1/taskforce_on_traveller_education_-_report_of_the_taskforce_to_the_department_of_education.pdf

²²⁸ Haydon, D. (2015) *Promoting and Protecting the Rights of Roma Children and Young People in Northern Ireland*, Children's Law Centre, p39-42

restrictive learning environment and negative adult/child relationships in schools where challenging behaviour may lead to suspension or expulsion.²²⁹

A particular issue is provision for **children who may not receive education at school for a period of time**. An illustrative case²³⁰ concerned a 14 year old autistic child with functional dystonia suffering with pain, seizures and spasms. She had a statement of Special Educational Needs [SEN] but, as a result of her condition, was frequently unable to attend school. Those occasions were unpredictable, as was her period of absence. The case concerned a number of challenges including the non-delegable duty to ensure that a child with special educational needs receives the educational provision they require pursuant to Article 16 of the *Education (Northern Ireland) Order 1996* and the duty under Article 86 of the *Education (Northern Ireland) Order 1998* to make “arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who by reason of illness, expulsion or suspension from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them”. According to guidance issued by the Department of Education in September 2014,²³¹ for the minimum requirements in relation to Article 86, pupils had an entitlement to the full provision of their SEN to be delivered over 22 hours. However, the practice was for 5 hours per week, to be commenced after 20 days of absence. Article 2 of the First Protocol, Article 8 and Article 14 ECHR were engaged. Ultimately, the case was resolved through an agreed package. However, there remains a concern, noted by the Northern Ireland Commissioner for Children and Young People in a 2017 *Educational Inequalities and Inclusion Position Paper*, over the adequacy of education for children who cannot attend school due to illness, mental health issues, suspension or expulsion.²³²

This extends to a lack of support for **children and young people with health needs**, who are being taken out of school to attend appointments or are unable to participate in wider school curriculum activities; missing out on education and socialisation with peers due to their health needs. The *State of Child Health 2020* report noted that children with long term conditions are more likely to develop mental health problems and may have poorer education outcomes.²³³ It is therefore important that these children remain in education as

²²⁹ Include Youth submission to Children’s Law Centre, September 2020;
See: Include Youth response to NICCY Corporate Plan 2020-2023:
<http://www.includeyouth.org/mgmt/resources/include-youth-response-to-niccy-corporate-plan-2020-2023.pdf>, p7-8

²³⁰ See: *LM and EM* – Keegan J, October 2019

²³¹ See: <https://www.education-ni.gov.uk/sites/default/files/publications/de/pdf-format-2014-eotas-guidance-document.pdf>

²³² See: www.ief.org.uk/wp-content/uploads/2017/08/educational-position-paper-july-2017-final.pdf

²³³ RCPCH (2020) *State of Child Health 2020. Northern Ireland*, p27

much as possible, with health services working together to co-ordinate care appointments in a 'one stop shop' model (particularly where a number of specialists are involved), and those subject to a Health Care Plan are managed appropriately within the context of the Department of Education's *New School Day* Guidance regarding re-opening of schools during the COVID-19 pandemic.

Deafness is not a learning disability, yet **deaf children** are at risk of falling a whole grade behind their hearing friends. Research shows that every category of deafness, including mild hearing loss, has a negative effect on educational attainment. According to Department of Education data from 2017/18, only 48% of deaf school leavers obtained 5+ GCSEs at grades A*-C2 including English and Maths, compared to 71% of the total school population: an attainment gap of 23%. In 2014/15 this gap was 18%, so the situation has worsened in the intervening years.²³⁴ The majority (91%) of deaf children are born to hearing parents, most with no experience of deafness. 78% of deaf children in Northern Ireland attend mainstream schools where they may be the only deaf child. When early identification of deafness is followed quickly by high quality specialist intervention, deaf children can achieve the same outcomes as other children. A key intervention is the Teacher of the Deaf service, providing specialist support for families in the early years and helping to ensure that deaf learners in school have full access to the curriculum. Without this support, deaf children are more likely to struggle at school, experience mental ill health and have fewer employment opportunities.²³⁵ However, a 2019 report by the Consortium for Research into Deaf Education on educational staffing and service provision for deaf children found that the number of qualified Teachers of the Deaf in employment fell by 11% over the past year and has fallen by 28% since an initial survey in 2011.²³⁶

Since the last reporting period, the five NI Education Boards have been replaced by a single Education Authority. From the outset, systemic operational failures have impacted adversely on **children with Special Educational Needs [SEN] and disabilities**. A recent internal audit carried out by the Education Authority revealed a range of entrenched failures within the Children and Young People's Services Directorate, particularly regarding governance and accountability mechanisms in the area of statutory operations which has responsibility for determining provision for children with more complex SEN and disabilities.²³⁷ A report published in September 2020 by the Northern Ireland Audit Office

²³⁴ National Deaf Children's Society submission to Children's Law Centre, September 2020

²³⁵ The National Deaf Children's Society submission to Children's Law Centre, September 2020

²³⁶ See: <https://www.ndcs.org.uk/media/6062/cride-2019-northern-ireland-report-final.pdf>

²³⁷ CLC submission to Children's Law Centre, September 2020

confirmed that these operational deficiencies have continued.²³⁸ Concerns in relation to many of these issues have consistently been raised by the Children’s Law Centre, both informally and formally through legal action to the Special Educational Needs and Disability Tribunal (SENDIST) and through the courts by way of Judicial Review (eg regarding delays in making provision for pupils with SEN, including appropriate placements). Statistics demonstrate that the Education Authority rarely wins a case at SENDIST - the majority of cases are either conceded by the Authority or withdrawn by parents as they have achieved a satisfactory outcome for their child based on evidence of need.

The number of children with SEN who require specialist provision is increasing each year. There are not enough specialist placements available to accommodate these children and their needs. While some children with SEN can attend mainstream schools, this is not an appropriate placement for all (especially given the current lack of inclusive provision). Between October 2019 and September 2020, 242 SEN placement issues were raised on Children’s Law Centre’s advice line.²³⁹ Increasing numbers of children with SEN, alongside more parents and children being aware of their rights, has led to an increase in the number of parents and schools applying for statutory assessments and seeking statements of SEN. However, the Education Authority does not have the capacity to cope with this increased demand. A constant backlog causes further distress to the child and their family as they are unable to access the help they need for long periods of time. The Education Authority timeframe for carrying out a statutory assessment should be 26 weeks maximum. But the process has been subject to extensive delays,²⁴⁰ with further delays being caused by inadequate statements being produced and parents having to apply for appeals/tribunals. Out of 1,861 education-related queries to the Children’s Law Centre’s advice line over the last year, 598 were regarding statements of SEN.²⁴¹ These long-term systemic failures, due to chronic underfunding of Children’s Services as well as operational deficiencies, have created barriers to inclusion and resulted in reduced access to education for children with SEN and disabilities. The system is predominantly based on resource-centred, rather than child-centred, decision making. These concerns were clearly illustrated in a 2020 review by the Northern Ireland Commissioner for Children and Young People of SEN provision in mainstream schools.²⁴²

²³⁸ NI Audit Office (2020) *Impact Review of Special Educational Needs*. Available at: <https://www.niauditoffice.gov.uk/sites/niao/files/media-files/242135%20NIAO%20Special%20Education%20Needs%20Lw%20Rs%20%28complete%29.pdf>

²³⁹ CLC submission to Children’s Law Centre, September 2020

²⁴⁰ Meredith, R. (2020) Hundreds of special needs children have no September place, *BBC NEWS*, 24 June 2020. Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-53152284>

²⁴¹ CLC submission to Children’s Law Centre, September 2020

²⁴² NICCY (2020) *Too Little, Too Late*. Available at: <https://www.niccy.org/media/3515/niccy-too-little-too-late-report-march-2020-web-final.pdf>

Refugee and asylum seeking children often experience severe disruption to their learning, which continues as they resettle in a new country. They also experience many Adverse Childhood Experiences (ACEs) - widely recognised as having potentially harmful and long-term impacts, including on educational outcomes. There is a lack of research and data on the experience of refugee and asylum seeking children in Northern Ireland. Research conducted with Syrian refugee children and their families outlines some of the challenges they face.²⁴³ It highlights that schools are often poorly equipped to meet the specific needs of refugee students, who may arrive with substantial gaps in their knowledge due to interrupted or no previous experience of education. Although they value education, children with limited or negative experiences of school in transition countries (including physical punishment or racial discrimination) may be understandably apprehensive. Some worry about being unable to make friends or communicate their needs to teachers due to language barriers. A number of factors can impact upon a child's engagement with education, including the time of year they arrive and their educational needs. In particular, placements in Special Schools can take longer to secure, especially if a child has complex medical needs. The research found that support for refugee children varies considerably, particularly when addressing language barriers - while some schools have specialist programmes or bi-lingual units, provision in others may involve little more than one hour of additional English classes a week. Differing approaches to support and placement of refugee children result in a postcode lottery in terms of their educational experiences. Illustrating difficulties for older young people, a young man was initially informed that he was not eligible for a student loan or grant due to his asylum seeking status.²⁴⁴

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - address inequalities in education generally, and the low educational outcomes of specific groups, including: Travellers, Roma, care experienced children, those unable to attend school for a period of time, deaf children, children with SEN or disabilities, refugee and asylum seeking children?
 - collect disaggregated data about the educational experiences of groups at risk of educational inequality, to inform policy and practice?
 - ensure the right to education for children with a statement of SEN?

²⁴³ Robertson, A. (2020) 'A New Life for Me'. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo's NI

²⁴⁴ See: <https://www.belfastlive.co.uk/news/belfast-news/mystery-businessman-offers-fund-asylum-18958230> This young man arrived in Northern Ireland with his family as an asylum seeker 6 years ago, attended College (achieving 2A* and an A grade at A-level) and was offered a place at Queen's University Belfast to study for a degree. Refused leave to remain when he reached 18, he appealed this decision. While the financial situation has been resolved and he commenced his studies in September, his appeal is yet to be heard at the time of writing [November 2020].

- enable the co-ordination of care appointments for children with health needs to ensure maximum attendance at school?
- reduce the widening attainment gap for deaf children and arrest decline in numbers of specialist Teachers of the Deaf?
- make the SEN assessment and statementing process fit for purpose, effectively support children going through this process and ensure the best possible outcomes for children with SEN?
- ensure legal compliance with the SEN and Disability framework, and enable full access to inclusive education through provision of necessary human/ financial resources?
- ensure the adoption of positive attitudes towards cultural diversity and equality in schools, with development of welcoming and inclusive environments for refugee and asylum seeking children?

The CRC (2016, para 73b) recommended the abolition of ‘informal’ exclusions. However, **children with SEN and/or disabilities continue to experience ‘informal’ exclusions** - sent home early from school, educated part-time over a lengthy duration, or with no suitable school placement to attend. These exclusions are unregulated, potentially unlawful disability discrimination and often indicative of unidentified learning difficulties or unmet need. Primarily affecting children who have behavioural difficulties, anxiety disorders, autism or learning disabilities, they are not formally documented or reported, resulting in a lack of available data (acknowledged by the Education Authority on 24/06/20 in evidence to the Education Committee).²⁴⁵ This issue has become more prevalent due to the imposition of financial austerity measures since the last CRC Report in 2016 and failure to introduce proactive measures to prevent informal exclusions. While the policy of inclusion is having an impact, with increased numbers attending mainstream school, the resources, attitudinal shifts, training and inclusive practices required to enable equal access to educational opportunities are lagging behind.

Question:

- What measures are being taken by the Northern Ireland Executive to end informal school exclusions of children with SEN/disabilities?

Despite the CRC’s (2016, para 73a) recommendation, in Northern Ireland the **use of unregulated ‘transfer tests’ (i.e., academic selection)** determines whether children attend a grammar or non-grammar post-primary school. Although academic selection via the so-called ‘11+’ test was abandoned in 2008, use of unregulated ‘transfer tests’ (AQE and GL) ensure that academic selection continues. Just under half of those in the final year of primary school sit these tests. In 2018/19, 13,101 applications were made using these tests

²⁴⁵ CLC submission to Children’s Law Centre, September 2020

for 9,462 places at 63 academically selective grammar schools. Academic selection has been shown to adversely affect more disadvantaged groups of children.²⁴⁶ Furthermore, recent research conducted to inform an emotional health and wellbeing framework for children found that preparation for the transfer test was leaving young children with severe anxiety.²⁴⁷

The COVID-19 situation has heightened anxiety for many children in relation to the ‘transfer tests’, usually conducted during the Autumn term, as children returned to school after months of ‘home-schooling’ with limited time for preparation. In September 2020, two cases²⁴⁸ challenged decisions of the Education Authority, the Department of Education and 2 examination boards (Association for Quality Education Ltd and Post Primary Transfer Consortium Ltd), in relation to the 2020 ‘transfer tests’ for grammar schools and the date by which applications for post-primary school places must be lodged. The issues included whether the 2020 arrangements will exacerbate any existing inequalities in education for children, or otherwise have a disproportionate detrimental effect on some children, and whether the decisions in relation to these arrangements should have taken into account UNCRC Article 3. ECHR Articles 8 and 14 as well as Article 2 of the First Protocol were engaged. NICCY was given leave to intervene on 2 issues. Firstly, the extent to which the lack of a level playing field for children to reach their educational potential, which is exacerbated by the transfer test, has been further exacerbated and the attainment gap widened by the closure of schools and the resort to online learning so as to render the proposed transfer tests unfair and wrong. Secondly, the role of the UNCRC (in particular Articles 2, 3, 12 and 17 and 28 and 29) as an aid to interpreting the ECHR rights affecting children. The case resolved by an agreement to provide further time for the post-primary transfer tests, which are now due to be taken in January 2021. However, the court appeared to recognise the significance of the attainment gap and the disproportionate impact that school teaching arrangements can have on children who are vulnerable and already disadvantaged. In the interests of such children, it will be important to ensure that inequalities do not become embedded and a significant attainment gap is not continued through a failure to properly assist these children. This is particularly the case for arrangements made for: (i) blended and/or on-line teaching; (ii) quarantine and/or isolation of children; (iii) school closure; (iv) exams.²⁴⁹

²⁴⁶ CREU (2020) *Educational Underachievement in Northern Ireland. Evidence Summary*. Available at: <https://www.stran.ac.uk/research-paper/creu-2020-evidence-summary/>

²⁴⁷ NCB (2019) *Development of an Emotional Health and Wellbeing Framework for Children and Young People in Northern Ireland*. Available at: <https://www.ncb.org.uk/sites/default/files/field/attachment/news/Informing%20the%20Development%20of%20an%20Emotional%20Health%20and%20Wellbeing%20Framework..pdf>

²⁴⁸ *JR115 (a Minor) and JR116 (a Minor)* – Morgan LCJ, September 2020

²⁴⁹ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, October 2020

Question:

- What measures are the Northern Ireland Executive taking to end academic selection and replace it with a children’s rights compliant system that ends educational inequalities?

The *Addressing Bullying in Schools (NI) Act 2016* has not been commenced. **Children from vulnerable groups have continued to report experiences of bullying.** A report detailing findings from the 2014 *Young Life and Times Survey* of 16 year olds in Northern Ireland highlighted that homophobic name calling was common in schools, with **LGBT+** young people experiencing homophobic and transphobic bullying and/or harassment.²⁵⁰ Subsequent research commissioned by the Department of Education into the post-primary experiences of LGBT 16-21 year olds found that: 48% of respondents had experienced bullying as a result of their sexual orientation and/or gender identity. The main forms of bullying included name calling, lies or false rumours, being isolated by other pupils and being hit/kicked/ pushed/shoved around. 39% of those bullied had reported the bullying to school staff. However, 54% of these young people felt “unsupported” or “very unsupported” by the member of staff’s response.²⁵¹ In other research exploring the needs and experiences of LGBT young people, commissioned by the Education Authority and conducted the same year, 68% of respondents reported experiencing bullying in school as a result of their sexual orientation/ gender identity, with homophobic and transphobic name-calling or ridicule perpetuated by both pupils and teachers.²⁵² The Education Authority has produced guidelines: *Supporting Transgender Young People*, but these are non-statutory - although the existence of transgender identity is recognised, there is no actual requirement to put provision in place in relation to these children’s experience of education. Furthermore, this document uses ‘transgender’ as an umbrella term, blurring rather than distinguishing between the differing identities this term is used to cover. Transgender and intersex young people, like those who may experience other forms of gender variant identities, have the same rights as other young people to be protected from bullying.²⁵³ Discussing their experiences of living in Northern Ireland, Syrian **refugee children**

²⁵⁰ Schubotz, D. (2015) *Relationships and Sexuality Education (RSE) and Homophobic and Transphobic Name Calling*, YLT, See also: McBride, R-S. and Schubotz, D. (2017) Living a fairy tale: the educational experiences of transgender and gender non-conforming youth in Northern Ireland, *Child Care in Practice*, Vol. 23, Issue 3, DOI: [10.1080/13575279.2017.1299112](https://doi.org/10.1080/13575279.2017.1299112)

²⁵¹ Public and Corporate Economic Consultants (2017) *Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)*, Research Briefing, September 2017, Department of Education, p7-8

²⁵² Neill, G. and Meehan, D. (2017) *Still Shouting: The needs and experiences of young people in Northern Ireland who identify as lesbian, gay, bisexual and/or transgender (LGBT)*, Cara-Friend and Youth Action, p20-21

²⁵³ Focus – The Identity Trust submission to Children’s Law Centre, September 2020; See: NI Anti-Bullying Forum (2018) *Supporting Schools when Responding to Bullying Incidents Involving Lesbian, Gay, Bisexual and Transgender (LGBT) Children and Young People*, Effective Responses to Bullying Behaviour: Supplement

talked about difficult peer relationships and bullying in school. While a few mentioned racist bullying, others gave examples of racist name-calling, derogatory comments related to their religion, ethnicity, or for wearing a hijab, and perceived exclusion by their wider peer group.²⁵⁴

Question:

- What measures have the Northern Ireland Executive taken to ensure that legislation to address school bullying is commenced and effectively implemented to protect all children?

The CRC (2016, para 73e) recommended active promotion of a fully integrated education system in Northern Ireland, with careful monitoring of shared education to ensure that it facilitates social integration. However, **school segregation by religion continues** with most Protestant and Catholic children still educated apart from each other, representing a considerable barrier to social cohesion and threatening the freedom of religion or belief of children educated in this segregated system.²⁵⁵ Unlike in England and Wales, where religiously selective admissions policies are explicitly permitted, the fact that children from different communities attend separate schools in Northern Ireland is largely the result of self-selection - families from different religious communities choosing schools which have an ethos that aligns with their own faith/ community background. Research from England demonstrates that, in addition to separating children according to faith background, admission by religion leads to socio-economic selection – English comprehensive secondary schools with no religious character admit 5% more pupils eligible for free school meals than live in their local areas. In contrast, comprehensive Church of England secondary schools admit 15% fewer; Catholic secondary schools 28% fewer; Jewish secondary schools 63% fewer; and Muslim secondary schools 29% fewer.²⁵⁶ Similarly religious admissions policies have been shown to segregate along ethnic lines, with Catholic schools in England taking 4.4% fewer Asian pupils than would be expected given the make-up of their local areas. Evidence suggests that positive contact of the kind that happens in diverse schools is pivotal to community cohesion,²⁵⁷ and that pupils in ethnically mixed schools are more trusting and have more positive views of children from different

²⁵⁴ Robertson, A. (2020) 'A New Life for Me'. *Integration Experiences of Syrian Refugee Children and Their Families*, Barnardo's NI, p49; 51; 61-62

²⁵⁵ Northern Ireland Humanists submission to Children's Law Centre, September 2020

²⁵⁶ Fair Admissions Campaign (2015) *Overview of issues to do with religious selection*. Available at: <http://fairadmissions.org.uk/wp-content/uploads/2015/09/Overview-of-issues-to-do-with-religious-selection-in-school-admissions.pdf>

²⁵⁷ Fair Admissions Campaign (2017) *Research into religiously selective admissions criteria*. Available at: <http://fairadmissions.org.uk/wp-content/uploads/2017/08/2017-08-29-FINAL-Religious-Selection-Research-Survey.pdf>

backgrounds than do pupils in segregated schools.²⁵⁸ In Northern Ireland research has demonstrated that, while mixing improves intergroup relations even when single ethos schools have a more diverse pupil intake, children in these schools are less adept at cultivating friendships between different groups than their counterparts in the integrated system (which is predicated on enhancing meaningful interactions between those groups).²⁵⁹

Under Article 64(1) of the *Education Reform (Northern Ireland) Order 1989* it is “the duty of the Department [of Education] to encourage and facilitate the development of **integrated education**, that is, the education together at school of Protestant and Catholic pupils” and the *Belfast/ Good Friday Agreement 1998* contained a pledge “to facilitate and encourage integrated education”. Integrated schools balance the proportion of pupils from each community they serve, aiming at 40% Catholic, 40% non-Catholic (Protestant) and 20% other. Their pupil body, staff and management structures all reflect this mix. Pupils from other Christian backgrounds, as well as those with minority faith or non-religious backgrounds, are more likely to attend integrated or controlled (mainly Protestant) schools.²⁶⁰ However, according to the most recent figures, only 6% of primary pupils are educated in integrated schools, a figure that rises to just 16% in non-grammar secondary schools.²⁶¹ This is in contrast with a high level of public support for integrated education - a 2018 poll found that 69% of respondents agreed with the statement: “Every school in Northern Ireland should be integrated”.²⁶² Asked if they were deciding where to send their children to school, would they prefer a school with children of only their own religion or a mixed-religion school, 56% of 16-year olds responding to the 2019 *Young Life and Times Survey* expressed a preference for mixed religious schooling.²⁶³ The number of pupils attending integrated schools has doubled in the 20 years since the *Belfast/Good Friday*

²⁵⁸ Hewstone, M. et al. (2017) *Diversity and Social Cohesion in Mixed and Segregated Secondary Schools in Oldham*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/634118/Diversity_and_Social_Cohesion_in_Oldham_schools.pdf

²⁵⁹ Blaylock, D. et al. (2018) ‘Integrating Northern Ireland: Cross-group friendships in integrated and mixed schools’ *British Educational Research Journal*, Vol. 44, No. 4, pp643–662. Available at: <https://bera-journals.onlinelibrary.wiley.com/doi/abs/10.1002/berj.3452>

²⁶⁰ Northern Ireland Humanists submission to Children’s Law Centre, September 2020

²⁶¹ Department for Education (2020) Annual enrolment figures 2019-2020. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/revised%203rd%20March%202020%20-%20Annual%20enrolments%20at%20schools%20and%20in%20pre-school%20....pdf>

²⁶² Sky Data for Sky News (2018). Available at: <https://view.publitas.com/integrated-education-fund/sky-news-poll-summary-report>

²⁶³ See: https://www.ark.ac.uk/ylt/2019/Community_Relations/OWNMXSCH.html

Agreement and many are over-subscribed. The existing 65 integrated schools are unable to meet demand - a particular problem at post-primary level where almost a quarter of Year 8 students who applied for admission to an integrated school in 2019 were unsuccessful in obtaining a place.²⁶⁴ An Independent Review of Integrated Education, commissioned by the Department of Education, reported in November 2016.²⁶⁵ This should have provided a blueprint for the Department to take action to comply with its statutory duty to encourage and facilitate the development of integrated education. However, no time bound targets were set for implementation of the Review recommendations, which included an in-depth audit of demand for places in existing integrated schools and proactive plans for increasing the places available in the integrated sector.

According to S.2a and 2b of the *Shared Education Act (Northern Ireland) 2016*, ‘**shared education**’ means “the education together of (a) those of different religious belief, including reasonable numbers of both Protestant and Roman Catholic children or young persons, and (b) those who are experiencing socio-economic deprivation and those who are not”. This is “secured by the working together and co-operation of two or more relevant providers” (eg in sharing facilities or teachers delivering joint initiatives or classes). The children participating in shared education projects do not attend the same school where they learn, eat and socialise together on a daily basis as they do in an integrated school. The Act places a duty on the Department of Education to “encourage, facilitate and promote shared education”. Although shared education contributes to a greater degree of mixing between Northern Ireland’s divided communities, it does not address the core issue of a segregated education system. In many cases, only a selected group of pupils are able to participate in shared education programmes, with the majority excluded from these. The Department of Education reported to the Northern Ireland Assembly that, as of June 2019, 61% of Northern Ireland’s primary, post-primary, and special schools were involved in some form of shared education (with 408 more schools participating than was the case in June 2016). This is 87,385 pupils, a quarter of the school population across these phases. However, just under a third of schools do not engage with shared education at all.²⁶⁶ Significant funding has been allocated to Shared Education - £25 million under the ‘Delivering Social Change Signature Project’ (2014-19) and Euro29 million under the ‘Collaboration and Sharing in Education Project’ (2017-2022).²⁶⁷ The first statutory

²⁶⁴ NI Council for Integrated Education (2020) *NICIE Impact Report 1April 2019 – 31 March 2020*. Available at: <https://www.nicie.org/wp-content/uploads/2020/09/NICIE-Impact-Report-2019-20.pdf>

²⁶⁵ See: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Integrating%20Education%20Report.pdf>

²⁶⁶ Department of Education (June 2020) *Advancing Shared Education: 2nd Report to the Northern Ireland Assembly*, paras 7.4, and 5.21. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/education/Shared%20Education%202nd%20Report%20to%20Assembly%20June%202020.PDF>

²⁶⁷ See: <https://www.eani.org.uk/parents/shared-education>

monitoring report outlining progress in advancing shared education was published in May 2018. While stating that initial evidence suggested the impact of shared education on promoting good relations and respect for identity, diversity and community cohesion was positive, it confirmed that the Department “plans to continue to monitor the impact over time to enable firmer conclusions to be drawn”.²⁶⁸ Thus, a significant funding stream is being made available for shared education without firm conclusions as to its impact. This approach favours collaboration between different school sectors and potentially undermines the duty to “encourage and facilitate the development of integrated education”.²⁶⁹

The current Northern Ireland schooling system breaches UNCRC Articles 29, 2 and 14.²⁷⁰ The 2020 *New Decade, New Approach* agreement, endorsed by the Executive parties, stated that the current diversity of school types is “not sustainable” and included the commitment to establish an external, independent review of education provision. In March 2020 the Assembly agreed, almost unanimously, that this review should take place urgently.

Questions:

- What measures does the Northern Ireland Executive have in place to:
 - establish a time-bound implementation plan for the recommendations of the 2016 Independent Review of Integrated Education?
 - increase integrated school provision, including capital and revenue funding, to meet demand and the statutory duty “to encourage and facilitate the development of integrated education”?
 - address shortcomings of shared education, including it being predicated on bringing together children of different religions with no reference to those holding non-religious beliefs?
 - conduct an independent review of Northern Ireland education provision, as agreed in March 2020?

Although science is a statutory element of the curriculum in Northern Ireland, there is **no requirement to teach about evolution**. Furthermore, unlike in England - where state-funded schools are precluded from teaching “any view or theory ... as evidence-based if it

²⁶⁸ See: https://dera.ioe.ac.uk/31805/1/Shared%20Education%20-%20Report%20to%20Assembly%20May%202018_2.pdf

²⁶⁹ NI Council for Integrated Education submission to Children’s Law Centre, September 2020

²⁷⁰ Northern Ireland Humanists submission to Children’s Law Centre, September 2020

is contrary to established scientific or historical evidence and explanations”²⁷¹ - there is **no prohibition in Northern Ireland on the teaching of pseudoscientific theories such as creationism or intelligent design**. At Key Stage 3, pupils are expected to learn about the environment and human influences, as well as the solar system and universe, and to “develop a sense of wonder about the universe” through considering the complexity, diversity, and interdependence of living things.²⁷² But neither evolution nor natural selection is mentioned in the minimum content. Some politicians have actively endorsed the teaching of creationism in schools, with one stating that he wished to see it taught in every school in order to “[reach] out to children who have been corrupted by the teaching of evolution”.²⁷³ UNCRC Article 28 includes “the elimination of ignorance” and “facilitating access to scientific and technical knowledge”. This includes children not being exposed to doctrines masquerading as science but which are not. The teaching of such theories as fact also undermines the freedom of thought, conscience, religion or belief protected by UNCRC Article 14.²⁷⁴

Questions:

- What measures have the Northern Ireland Executive in place to:
 - ensure evolution is explicitly included in the statutory science curriculum in all schools?
 - prevent schools teaching creationism, intelligent design and other pseudoscientific theories as evidence based?

Religious Education [RE] is not inclusive. At present, under Article 21(2) of the *Education and Libraries (Northern Ireland) Order 1986*, all grant-aided schools in Northern Ireland are legally required to provide Religious Education (RE) that is explicitly “based on the holy scriptures”. While this education is not supposed to be denominational in content, the syllabus has been developed and is overseen by a consortium of nominees representing the four main Christian churches in Northern Ireland (Catholic, Church of Ireland, Presbyterian, and Methodist), with no representation of minority faiths or humanism.

²⁷¹ Department for Education (2014) ‘Academy and free school funding agreement: single academy trust’. Available at: <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements-single-academy-trust>

²⁷² CCEA, *Science and Technology: Science, Statutory Requirements*. Available at: <https://ccea.org.uk/downloads/docs/ccea-asset/General/Statutory%20Requirements%20for%20Science%20at%20Key%20Stage%203.pdf>

²⁷³ Ainsworth, P. (2016) ‘MLA backs event promoting teaching children creationism’, *Irish News*, 21 September, 2016. Available at: <http://www.irishnews.com/paywall/tsb/irishnews/irishnews/irishnews//news/2016/09/21/news/mla-backs-conference-promoting-the-teaching-of-creationism-in-schools-702781/content.html>

²⁷⁴ Northern Ireland Humanists submission to Children’s Law Centre, September 2020

Consequently, the RE curriculum it has generated is almost exclusively Christian and fails to adequately respect the requirement that, in line with guidance about Article 9 of the *European Convention on Human Rights*, “information and knowledge included in the curriculum is conveyed in an objective, critical, and pluralistic manner”.²⁷⁵ Not only does this threaten the freedom of thought, conscience, religion or belief protected by UNCRC Article 14 but also it undermines the provisions against discrimination outlined in Article 2.²⁷⁶

Within the core syllabus for RE, Key Stage 3 includes just one module entitled ‘World Religions’.²⁷⁷ Within this, the rationale given for teaching about religions other than Christianity is “to develop knowledge of and sensitivity towards, the religious beliefs, practices and lifestyles of people from *other* religions in Northern Ireland” (emphasis added) - the implicit assumption is that pupils will be Christians learning about other faiths, rather than those who hold these faiths themselves. In the 2019 *Young Life and Times Survey* of 16 year olds, 31% of respondents did not consider that they belonged to any particular religion.²⁷⁸ Yet Humanism is entirely absent from the curriculum, as is discussion of the fact that there are people who hold non-religious beliefs. Failure to include adequate coverage of the beliefs of a significant proportion of the population is not in keeping with UNCRC Articles 2, 13, or 14.²⁷⁹

Questions:

- What measures have the Northern Ireland Executive taken to:
 - address the core RE syllabus being designed by the four main Christian churches, with no involvement of representatives from non-religious or minority faiths?
 - ensure the RE curriculum acknowledges and respects the beliefs of children with no religion and those with minority faiths?

The **COVID-19 pandemic responses have increased educational inequalities**, an issue recognised in a report published in June 2020 by the Equality Commission for Northern Ireland.²⁸⁰ The expectation that children would be educated via **distance learning**

²⁷⁵ European Court of Human Rights (2020) *Guidance on Article 9 of the European Convention on Human Rights. Freedom of thought, conscience and religion*, 13.8.20, p40: para 113

²⁷⁶ NI Humanists submission to Children’s Law Centre, September 2020

²⁷⁷ Department of Education (2007) *Core Syllabus for Religious Education*. Available at: <https://www.education-ni.gov.uk/sites/default/files/publications/de/religious-education-core-syllabus-english-version.pdf>

²⁷⁸ See: <https://www.ark.ac.uk/ylt/2019/Identity/ANYRELIG.html>

²⁷⁹ NI Humanists submission to Children’s Law Centre, September 2020

²⁸⁰ See: <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/EducationC19-PolicyPosition.pdf>

differentially adversely impacted on disadvantaged children - many had limited access to appropriate equipment or internet connectivity; parents lacked confidence, knowledge or skill in relation to home schooling and many families experienced significant tensions about this issue; parents who were frontline workers were dealing with practical and emotional challenges both at work and home. In addition, uneven responses of schools and teachers affected access to good quality educational resources and provision.²⁸¹ In June 2020, a rapid response survey about education during school closures found that, among foster carer respondents in Northern Ireland, the level of home learning was extremely varied.²⁸²

An exam results ‘U-turn’ (in which exam results were replaced by teacher assessments) **was preceded by a high proportion of students in Northern Ireland receiving grades lower than their predicted grades.** It has been argued that the algorithm used to calculate the original grades further entrenched education inequalities as those from poorer backgrounds were more likely to have had their grades lowered.

The *Coronavirus Act 2020* enabled the diminution of legal obligations to children with SEN in Northern Ireland. The Act conferred powers on the Department of Education to dis-apply or modify educational statutory duties. Pursuant to that power the Department issued *Temporary Modification of Educational Duties Notice (Northern Ireland) 2020*, followed by 9 successive similar Notices. These all modified statutory duties in relation to the assessment of, and provision for, special educational needs in Articles 2–21B of the *Education (Northern Ireland) Order 1996* and Regulations 5–22 of the *Education (Special Educational Needs) Regulations (Northern Ireland) 2005* by replacing the ‘absolute duty’ with a ‘best endeavours duty’. This legislation passed without proper scrutiny. In the absence of equality screening, child impact assessment or consultation, subsequent policies have resulted in avoidable and predictable adverse impacts on vulnerable children with SEN and disabilities.²⁸³ Pre-existing issues, such as lack of access to education and disrupted education placement, have been exacerbated. Children’s services in education, already run down through sustained austerity cuts, were unable to cope with the level and type of need that emerged and stopped direct provision. The Children’s Law Centre issued pre-action correspondence and court proceedings in relation to a number of children with severe learning disabilities, autism and challenging behaviour who were left at home with little or no services during school closures. These children and their families have suffered harm due to loss of the protective factor provided by attendance at specialist schools alongside disruption of health and social services supports. They were not enabled to

²⁸¹ Parenting NI submission to Children’s Law Centre, September 2020

²⁸² Lawson K. and Elliott D. (2020) *Education during the Covid-19 pandemic and transitioning back to school: Experiences of the fostering sector*, The Fostering Network

²⁸³ CLC submission to Children’s Law Centre, September 2020

access any form of education throughout the spring/ summer ‘lockdown’.²⁸⁴ There do not appear to be any contingency plans for future local/ national lockdowns or periods when children may be at home during school term for reasons related to the Coronavirus pandemic.

Over the summer of 2020, a number of challenges followed in relation to the lawfulness of the modification to legislation in the absence of any consultation, interpretation of ‘best endeavours’ to suit the availability of resources, delays in conducting the statutory assessment of special educational needs, and failure to provide in accordance with a statement of special educational needs.²⁸⁵ All three cases were resolved by agreement and any immediate public interest issue on the manner of the introduction of the Notices was removed when *Temporary Modification of Educational Duties (No. 10) Notice (Northern Ireland) 2020* was cancelled following the ‘easing’ of lockdown. Nevertheless, these cases raise an important issue regarding how any future changes to absolute duties should be made if further ‘lockdowns’ are announced or other measures dealing with COVID-19 or another emergency are introduced. The issue is particularly significant for Northern Ireland as a Northern Ireland Audit Office review²⁸⁶ found that the percentage of children with SEN is higher than in England, delays in the Statutory Assessment process persist, and the Education Authority is not accurately or consistently recording the Statutory Assessment start dates used to generate reports on compliance with the statutory 26 week timeframe.²⁸⁷

The most severely disabled children living in the most vulnerable family situations have suffered the greatest impacts and accessed the least help from the education system during the pandemic. When potential support systems emerged, these were unfit for purpose due to lack of consultation with key stakeholders and often too late as schools were about to close for the summer. Some schools refused to open for vulnerable children, and the Government provided insufficient direction or support to enable opening. Some very vulnerable children were not identified as needing help, despite being known to services. Others who were identified were unable to avail of any practical help as it was not designed to meet individual needs. Children, their siblings and parents suffered harm to their physical and mental health, with some children medicated to reduce displays of distress (including challenging behaviour, self-harm and aggression).²⁸⁸

²⁸⁴ CLC submission to Children’s Law Centre, September 2020

²⁸⁵ *EM (a Minor)*, July 2020; *EM (a Minor)*, August 2020; *JH (a Minor)*, September 2020 – all before NI Courts, heard by McAlinden J.

²⁸⁶ NI Audit Office (2020) *Impact Review of Special Educational Needs*. Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/242135%20NIAO%20Special%20Education%20Needs_Fnl%20Lw%20Rs%20%28complete%29.pdf

²⁸⁷ Monye Anyadike-Danes, QC, submission to Children’s Law Centre, October 2020

²⁸⁸ CLC submission to Children’s Law Centre, September 2020

To compound matters, extensive **delays in health assessments for children with SEN and disabilities are blocking access to early intervention**. The pandemic has exacerbated difficulties in accessing education, particularly for those whose parents cannot afford to pay for private assessments. Some children have been unable to get medical appointments for assessments for ADHD/ Autism, or Occupational Therapy, Speech and Language Therapy and ENT appointments.²⁸⁹

Questions:

- What measures are being taken by the Northern Ireland Executive to:
 - assess the impact of legislation and policies introduced in response to the COVID-19 pandemic on children, including those at risk of educational inequalities?
 - address the adverse impact of COVID-19 emergency legislation on children’s educational attainment and ensure that children most disadvantaged by the interruption of their education are adequately supported?
 - ensure future emergency legislation guarantees children’s right to education, including ensuring all children have access to required equipment, internet access, resources and educational support?
 - ensure inter-departmental cooperation, particularly between Health and Education, to enable identification of vulnerable children and effective multi-disciplinary working to guarantee children’s education, safety and wellbeing during future emergencies?

Rest, leisure, play, recreational activities, cultural and artistic activities

Although progress has been made in Northern Ireland over recent years in terms of a recognition of the value of play and leisure for children and young people, the CRC’s (2016, para 75a) recommendation that the rights of the child to rest, leisure, age-appropriate play and recreational activities be strengthened by adoption and implementation of play policies with sufficient and sustainable resources has not been fulfilled. The Draft 2019 *Children and Young People’s Strategy 2019-2029* had 8 high level outcomes, including that ‘children and young people enjoy play and leisure’, although **no clear funding line** has been identified to support its delivery. Significant investment through the ‘Early Intervention Transformation Programme’ led to successful implementation of a two-year ‘Play Matters’ project, which: raised awareness about the importance of children’s play with professionals and stakeholders responsible for planning, designing and managing public spaces; supported stakeholders to make a positive impact on children’s right to play

²⁸⁹ For example, CLC are working with the parent of a young child who is on 3 separate waiting lists for Speech & Language Therapy, an ENT appointment to assess the extent of a hearing loss, and assessment for Autism/ADHD. The current waiting list in the relevant HSC Trust area is 22 months. The child started mainstream school with no support and no statement of special needs in place. They are struggling and displaying signs of distress, including aggression, in the home and withdrawn at school.

through decisions and actions taken at both strategic and operational levels; supported local authorities and their partners within Community Planning Partnerships to create more child-friendly public spaces and communities. However, funding for this successful and popular initiative has come to an end, significantly reducing the Executive's capacity to ensure realisation of children's right to play.²⁹⁰

In relation to provision of age-related opportunities for play, anecdotal evidence from Youth Workers suggests that **statutory youth service provision has become much more 'outcomes focused', with content more appropriate for post-primary children.**²⁹¹ This is reflected in the Education Authority's *Quality Assurance Framework*, which fails to mention play. According to Education Authority data regarding provision in 2017, 69.1% of those engaging with the Youth Service (age range 4-25 years) were aged 4-13.²⁹² Yet these children are not necessarily gaining access to play-based activities which have been shown to be the most developmentally appropriate for their age group. Lack of focused provision for younger age groups was emphasised in the Chief Inspector's Report (2016-2018),²⁹³ which noted the need to review quality of provision for the 10-13 age group as there was often insufficient planning to meet their specific needs. In a review of 2019-2020 Inspection Reports concerning 14 youth settings, not one mentions play.²⁹⁴

In 2016, the CRC (para 74b) made specific reference to concerns regarding **"Insufficient places and facilities for play and leisure ... and public space for adolescents to socialise"**. Education Authority Youth Services have taken initial steps to address this imbalance by piloting the enhancement of play provision in 2 (of 11) local authority areas through the 'Youth@Play' programme.

Emerging research indicates the significant **impact of COVID-19 'lockdowns' on opportunities for children and young people to engage in essential play and leisure**, including self-directed play. In addition to restricting access to activities that support development, learning, good health and wellbeing, this has reduced children's capacity to develop resilience, new skills, and social connectivity. Research undertaken with 280 children and young people in Northern Ireland has also identified a number of concerns relating to the impact of COVID-19 on children's play patterns, with a 54% decline in social play (affecting opportunities to develop social skills and connections); a 22% decline in

²⁹⁰ PlayBoard submission to Children's Law Centre, September 2020

²⁹¹ PlayBoard submission to Children's Law Centre, September 2020

²⁹² Education Authority (2018) *Statistical and Geographic Report of the EA Registered Youth Service*, 2017 data cycle, p15. Available at: <https://www.eani.org.uk/sites/default/files/2019-02/Youth%20Service%20Statistical%20Report%20-%202017%20Data.pdf>

²⁹³ See: <https://www.etini.gov.uk/sites/etini.gov.uk/files/publications/cir-2016-2018.pdf>, p93

²⁹⁴ PlayBoard submission to Children's Law Centre, September 2020

active, physical play rising to 71% for the post-primary age range (potentially increasing childhood obesity and establishing sedentary activity patterns); a 22% increase in technology-focused play (reinforcing sedentary activity); and a 31% decline in time spent at play in their local area.²⁹⁵

Questions:

- What measures have the Northern Ireland Executive taken to:
 - review its 2011 *Play and Leisure Implementation Plan* and provide an updated, funded plan to deliver every child's right to play?
 - introduce a statutory duty for play?
 - work with Councils and/or community planning partnerships to embed and support the inclusion of play within local policies and strategies?
 - ensure public spaces are child/play friendly, and that age-appropriate, safe, accessible, inclusive and smoke-free play and recreation spaces are developed in consultation with children?
 - ensure the negative impacts of COVID-19 on children's right to play are urgently addressed?
 - support vulnerable children whose mental health and social development have been affected by COVID-19 lockdowns, including restricted access to play?

I. SPECIAL PROTECTION MEASURES

Asylum-seeking and refugee children

Despite the CRC's (2016, para 77e) recommendation, **the UK has no provisions for allowing unaccompanied and separated refugee children to sponsor family members to join them in the UK.**²⁹⁶ Although UK immigration law permits recognised refugees to sponsor their family members for the purposes of family reunion,²⁹⁷ the categories of family members include spouses and minor children. It does not permit parents and minor siblings. Between 2010 and 2018, 10,336 separated and unaccompanied children were granted asylum or some other form of protection in the UK.²⁹⁸ The UK has adopted family reunion guidance

²⁹⁵ See: <http://www.playboard.org/wp-content/uploads/2020/10/Our-Voices-Matter-Summary-Report-PlayBoard-NI-Nov-2020.pdf>

²⁹⁶ CLC submission to Children's Law Centre, September 2020

²⁹⁷ Immigration Rules, Part 11: Asylum, paras 352A-G. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>

²⁹⁸ The Migration Observatory (2019) *Migration to the UK: Asylum and Resettled Refugees*, 8 November 2019, University of Oxford. Available at: <https://migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

outside of the narrow Immigration Rules.²⁹⁹ However, a House of Commons briefing paper in March 2020 stated the government “anticipates that few applications from parents and siblings of a child with refugee status would fall within the scope of the policy”.³⁰⁰ The President of the UK’s highest immigration court referred in 2016 to the operation of “a blanket prohibition” against refugee children being reunited with their families.³⁰¹ Between 2017 and 2019, there was an unsuccessful attempt to introduce legislation that would allow refugee children to sponsor parents and siblings, through a Private Members Bill.³⁰² Members of the House of Lords, in support of the Bill, spoke in March 2018 of refugee children in the UK “without a single family member there to support them”.³⁰³ A similar attempt to introduce legislation is currently underway, but this is unlikely to succeed - an almost identical provision in the *EU Withdrawal Agreement* was overwhelmingly voted down in January 2020.³⁰⁴

Question:

- Given the UK Government recognises the need for a refugee adult to enjoy family reunion with their spouse and dependent children, what action is being taken to recognise the equal (or greater) right for a child to enjoy family reunion with their parents and minor siblings?

Children affected by armed conflict

UNCRC Article 38.4 states that “State Parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict”. The CRC also recalls the provisions of the *Declaration of the Protection of Women and Children in Emergency*

²⁹⁹ Home Office (2020) *Family reunion: for refugees and those with humanitarian protection*, Guidance. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856915/family-reunion-guidance-v4.0-ext.pdf

³⁰⁰ House of Commons (2020) *The UK’s refugee family reunion rules: a “comprehensive framework”*, Briefing Paper Number 07511, 27 March 2020. Available at:

<https://commonslibrary.parliament.uk/research-briefings/cbp-7511/>

³⁰¹ *AT and another* (Article 8 ECHR – Child Refugee – Family Reunification) Eritrea [2016] UKUT 00227 (IAC) [11]. Available at:

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UK%20AT%20and%20others%2000227%20IAC%20Feb%202016.pdf>

³⁰² *Refugees (Family Reunion) (No. 2) Bill 2017-19*. Available at:

https://publications.parliament.uk/pa/bills/cbill/2017-2019/0013/cbill_2017-20190013_en_2.htm#l1g1

³⁰³ *Refugees (Family Reunion) Bill [HL] 2019-21*. Available at: <https://services.parliament.uk/Bills/2019-21/refugeesfamilyreunion/stages.html>

³⁰⁴ See: <https://www.politicshome.com/news/article/government-slammed-as-inhumane-for-removing-protections-for-child-refugees-in-brexit-agreement>

and Armed Conflict 1974, which notes that attacks and inflicting incalculable suffering on children are prohibited and condemned (Article 1) and that all forms of inhuman and degrading treatment, including shootings, committed in the course of military operations are considered criminal (Article 5). Principle 4 of the 2005 *Report of the Independent Expert to Update the Set of Principles to Combat Impunity* (the Orentlicher Principles) focuses on victims' right to know, stating: "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate". In 1981, 15 year old Paul Whitters and 14 year old Julie Livingstone were killed in Northern Ireland by the RUC and British army using plastic bullets in separate incidents. **Files on the killings of these two children**, held by the British government, have been **closed to the public** (until 2059 in the case of Paul Whitters and 2062 in the case of Julie Livingstone) **and the government refuses to give their families access to the files**.³⁰⁵ In 2019, the Whitters family met with the (then) Northern Ireland Secretary of State about accessing Paul's files. They were told by the Secretary of State that she could not access the files once they had been deposited. This has been challenged on the basis of current legislation which allows for departmental access. Yet, to date, these files remain closed.³⁰⁶

Questions:

- What is the legal basis for denying the family of a child, killed by UK Security Forces, access to government files?
- What 'national security' issues are raised in the circumstances surrounding the killing of a child by a police officer or British soldier firing a plastic bullet?

Administration of juvenile justice

In 2016, the CRC (para 79a) repeated previous recommendations to raise the minimum age of criminal responsibility [MACR] in accordance with acceptable international standards. A 2011 *Review of the Youth Justice System in Northern Ireland* recommended that the MACR "should be raised to 12 with immediate effect" and "following a period of review of no more than 3 years, consideration should be given to raising the age to 14".³⁰⁷ Although the Department of Justice accepted this recommendation in principle, Inspectorate reports monitoring progress in implementation of the Review recommendations noted that this is a matter of sensitivity amongst members of the public and politicians, concluding: "The

³⁰⁵ See: <https://www.irishnews.com/news/northernirelandnews/2019/04/19/news/british-government-files-on-plastic-bullets-closed-up-to-additional-50-years-1601186/>

³⁰⁶ Pat Finucane Centre submission to Children's Law Centre, September 2020

³⁰⁷ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p107

lack of consensus on this issue means the recommendation is unlikely to be progressed”.³⁰⁸ In 2017, 80% of respondents to the *Kids Life and Times* survey of 5094 children aged 10-11 stated that the age of criminal responsibility should be set higher than it currently is, with 48% in favour of 14 or 16, and an additional 16% suggesting 18.³⁰⁹ Despite a ‘Raise the Age’ campaign involving organisations working with children and young people, the Northern Ireland Commissioner for Children and Young People, and children’s rights advocates,³¹⁰ **the age of criminal responsibility in Northern Ireland remains 10 years.** This contravenes international standards, including the *Global Study on Children Deprived of Liberty* which argued that states should establish a MACR “which shall not be below 14 years of age”.³¹¹

The impact of delay in the administration of youth justice remains concerning. Criminal Justice Inspection Northern Ireland reports have acknowledged that young people are more negatively affected by delay and called for priority to be placed on reducing delays for young people. The 2011 Youth Justice Review called for a reduction in delay in youth cases and for the introduction of statutory time limits for all youth cases, stating that the issue of delay stands out above all others as being in urgent need of reform and referring to the level of delay as “unconscionable”.³¹² Nine years later, an end-to-end statutory time limit of 120 days from arrest to disposal has not been delivered. Recent data indicates that young people consistently wait longer than adults for their cases to be dealt with in Magistrates’ courts and that, although the median time for charge cases has fallen, there has been a 55% rise in time taken for summons cases.³¹³

UNCRC Article 40.3b prioritises alternatives to judicial proceedings for under 18s “wherever appropriate and desirable”, with the caveat that human rights and legal safeguards be fully respected. CRC General Comment No. 10 on Juvenile Justice states that diversion “should be a well-established practice that can and should be used in most cases” and outlines safeguards which should apply to the use of diversionary measures, including: the existence of compelling evidence regarding the child’s involvement in the alleged

³⁰⁸ CJINI (2013) *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, CJINI, p41;
CJINI (2015) *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, CJINI, p60

³⁰⁹ McAlister, S., Carr, N., Dwyer, C. and Lloyd, K. (2017) *Raise the Age? Children’s attitudes towards the minimum age of criminal responsibility*, ARK Research Update Number 113, June 2017, p3

³¹⁰ See: <http://includeyouth.org/news/story/youth-advocates-say-ten-is-too-young>

³¹¹ Nowak, M. (2019) *Global Study on Children Deprived of Liberty Report*, A/74/136, 11 July 2019, para 109

³¹² Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p68

³¹³ See: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/case-processing-times-2017-18.pdf>

offence, free and voluntary consent given by the young person, clear identification in law as to which cases diversion can be used for, regulation of the discretionary powers of police and others in this regard, access to legal advice by the young person and no criminal record resulting from the use of diversionary measures.³¹⁴ The ‘Beijing Rules’ and the ‘Tokyo Rules’ also emphasize the benefits of using diversionary measures with young people and recommend that consideration should be given to such measures where possible. The Beijing Rules draw attention to the importance of ‘informed consent’ by the young person and opportunities to challenge this consent, noting that it may sometimes “be given out of sheer desperation on the part of the juvenile”.³¹⁵

Although there is a commitment to alternatives to prosecution for children within the wider youth justice system in Northern Ireland, particularly through use of restorative approaches, a clear emphasis on diversion *away from* the formal criminal justice system remains under-developed. Diversionary referrals accounted for the largest proportion (42%) of all referrals to Northern Ireland’s Youth Justice Services in 2019/20, followed by Court Ordered Diversionary Youth Conferences (28%) and Earlier Stage Interventions (17%).³¹⁶ Youth Engagement Clinics aim “to keep children who have offended away from the *formal Court environment*, whilst encouraging them to take responsibility for their behaviour and to take up whatever support is seen as necessary: to help prevent further offending behaviour and harm” (emphasis added).³¹⁷ Hosted by the Youth Justice Agency and delivered jointly with Police Youth Diversion Officers, these can lead to a number of diversionary disposals including informed warnings and restorative cautions – which are both PSNI led - and diversionary youth conferences organised by the Youth Justice Agency.

An organisation working with young people in conflict with the law has raised **concerns in relation to proportionality, legitimacy, effectiveness, efficiency and rights compliance regarding existing diversionary measures**.³¹⁸ In 2017, the Northern Ireland Audit Office noted that “although well regarded internationally, it has not been demonstrated that

³¹⁴ UN Committee on the Rights of the Child (2007) *General Comment No 10 on Children’s Rights in Juvenile Justice*, paras 24-27

³¹⁵ Office of the High Commissioner for Human Rights (1985) *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), Rule 4. See also: Council of Europe (2010) *Guidelines on Child Friendly Justice*, para 23

³¹⁶ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p1

³¹⁷ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p25

³¹⁸ Include Youth submission to Children’s Law Centre, September 2020

[youth] conferencing has reduced reoffending in Northern Ireland”.³¹⁹ Some diversionary measures can only be accessed through the admission of guilt and the consent of the child. This is particularly worrying given that many young people find the various options under diversionary disposals very confusing. It is critical that young people do not agree to a diversionary disposal without being fully aware of the impact this decision may have, especially with regard to a criminal record, or the implications of admitting guilt on future choices. However, practitioners working directly with young people have argued that the capacity of some young people to give informed consent and meaningfully participate (for example, in agreeing actions or conditions during diversionary youth conferences) is questionable. Meaningful participation in proceedings may also be affected by young people’s mental health issues or learning difficulties.³²⁰

The CRC’s (2016, para 79d) recommendation to establish the statutory principle that detention should be used as a measure of last resort for the shortest possible period of time has not been fulfilled. **Some children are being inappropriately detained in the JJC due to lack of alternative accommodation.** A high proportion are admitted under Article 39 of the *Police and Criminal Evidence (NI) Order 1989* [PACE], which was amended in 1998 to include the JJC as a “place of safety” after arrest. Previous inspections have noted that these placements are used to remove disruptive children from care homes (2008), in the absence of alternative accommodation “when they presented chronic social problems” (2011), and because there was no alternative accommodation available (2015). The most recent inspection, conducted in November 2017, noted that “half of the children admitted to the JJC on PACE were released within 48 hours. Many only remained in the JJC for a matter of hours, which suggested custody was not used as a last resort, but because there was no alternative accommodation available at the time of their court appearance”, with “a clear pattern of increased PACE admissions at weekends”.³²¹ In addition to having implications for staff deployment, the Inspectorate repeated previously noted negative consequences including: “possible diversionary disposals being bypassed; disruption to the JJC regime; the deterrent value of the JJC being lost; and the personal impact on a child, which could be significant”. Despite the JJC routinely challenging police officers when they enquired about a PACE admission to ensure more appropriate placements had been explored, and an inter-agency group reviewing the operation of PACE procedures and bail conditions for children, the Inspectorate stated “it is highly unlikely that the PACE problem

³¹⁹ NI Audit Office (2017) *Managing Children Who Offend*, p29. Available at: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/174770%20NIAO%20Managing%20children%20who%20offend_Fnl%20LowRs_5.pdf

³²⁰ Include Youth submission to Children’s Law Centre, September 2020

³²¹ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p13

will ever be completely eradicated unless legislation is changed”.³²² In 2019/20, 197 of the 298 admissions to the JJC were via PACE (66%) - an increase from 58% in 2015/16.³²³ These children are generally detained for 1-2 days, and only 49% go on to be held on remand or sentenced.³²⁴

The *Criminal Justice (Children) (Northern Ireland) Order 1998* stipulates that a child should be remanded in custody (awaiting trial or sentence) for public protection or if the alleged offence is serious. Inappropriate use of remand is a long-standing issue in Northern Ireland, particularly as the majority of those on remand are subsequently bailed and do not go on to serve a custodial sentence. In 2011 the Youth Justice Review stated that “the courts are using custodial remands wrongly – as a kind of ‘short, sharp, shock’ or more benignly to secure the young person’s safety”.³²⁵ **Some are held on remand because they have breached unachievable bail conditions³²⁶ or are unable to perfect bail due to being homeless.** There is a responsibility on Social Services to assess and provide such young people with suitable accommodation (which should not include unregulated placements in Bed and Breakfast or Hostel accommodation).³²⁷ The Northern Ireland Human Rights Commission *Annual Statement 2019* cited this as an issue requiring urgent attention.³²⁸ Yet, in 2019/20, the proportion of those remanded in custody remained almost a third (32%): 95 of the 298 admissions to the JJC.³²⁹ Very few children in the JJC are actually sentenced

³²² CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p13

³²³ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p31

³²⁴ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p39

³²⁵ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p55.

Four years later social workers reported to Inspectors that, in cases where it was difficult to access a secure placement at short notice for a LAC engaged in high risk behavior, “custody became an attractive option in order to keep the child safe”. They also reported that, when a child failed to comply with bail conditions, “staff believed that recourse to the criminal process was their only way of controlling behavior, even though they accepted it probably would not work in the longer term”: CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, CJINI/ RQIA/ ETI, p34

³²⁶ The Inspectorate noted in 2015 that few children had less than 3 bail conditions – the average was 5 – and additional conditions were added if the child failed to comply, which was considered counterproductive “because it could set children up to fail”: CJINI (2015) *An Announced Inspection of Woodlands Juvenile Justice Centre*, CJINI/ RQIA/ ETI, p34

³²⁷ CLC submission to Children’s Law Centre, September 2020

³²⁸ NI Human Rights Commission (2019) *The 2019 Annual Statement. Human Rights in Northern Ireland*, December 2019, p31-32

³²⁹ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p31

to custody – in 2019/20, just 6 (2%) of the 298 admissions were sentence admissions.³³⁰ Use of custody may also be inappropriate for these individuals. While the JJC sometimes holds children charged with/ convicted of grave crimes, all 15 in custody during the most recent inspection in November 2017 “were charged with low level offences of dishonesty and behavioural matters. Only a few were known to the PSNI as prolific offenders, but several had breached conditions of their bail or probation orders”.³³¹

Contrary to the CRCs (2016, para 79d) recommendation to ensure that detention is not used discriminatorily against certain groups of children, **specific groups remain over-represented in custody**. The over-representation in custody of those with mental illness, learning disabilities, speech, language and communication needs is well-established.³³² However, data in relation to these issues for children in Northern Ireland’s JJC is not readily available. Outlining the ‘profile’ of those in the JJC, details included in inspection reports do not generally include numbers or proportions with physical disabilities, learning difficulties, mental illness, or speech/language/communication needs. Yet it is clear that these are significant issues amongst the children in custody - the most recent Inspection report refers to: gaps in staff training “in relation to understanding the effects of trauma on children, as well as specialist needs, for example, learning disability and attention deficit hyperactivity disorder”; almost half of the children having special educational needs requiring additional support with aspects of their learning; the Healthcare team including a Learning Disability nurse; 80% of the children being prescribed some form of controlled medicine; and some children being prescribed high doses of anti-psychotic and anti-depressant medication when living in the community.³³³

It is clear from available data that Looked After Children are over-represented in custody. In 2019/20, 154 of the 298 admissions to the JJC (52%) were Looked After Children - 49 of the 126 individual children in custody during the year (30 were subject to a Care Order, 19 were voluntary accommodated).³³⁴ Contact with the justice system for young people in

³³⁰ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p31

³³¹ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p15

³³² Houston, S. and Butler, M. (2019) ‘More than just a number’: meeting the needs of those with mental illness, learning disabilities and speech and language difficulties in the criminal justice system, *Irish Probation Journal*, Volume 16. Available at: <https://www.pbni.org.uk/wp-content/uploads/2019/12/More-than-just-a-number.pdf>

³³³ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p21; 37; 41; 42; 46

³³⁴ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p35

residential care has been an issue of particular concern. Young people in care highlight differences in the response of care home staff to their behaviour compared with the response of parents to similar behaviour on the part of children living at home. Many state that parents would not call the police if a young person hit their sibling or broke furniture deliberately - the young person would be told off, and there would be consequences, but the police would not be called. They want to see a different approach to challenging behaviour, and for staff in children's homes to be trained to manage these behaviours with more honest, transparent and respectful approaches. A criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child.³³⁵ The 2011 Youth Justice Review recommended that "looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population".³³⁶ However, latest figures demonstrate that the proportion of admissions to the JJC who were 'looked after' increased from 36% in 2015/16 to 52% in 2019/20.³³⁷

There is also an over-representation of Catholics in custody. The Criminal Justice Inspectorate noted in 2018: "It is concerning that, as well as the actual number of Catholic children admitted, their proportionate representation had increased steadily in recent years: from 57% in 2013-14 to 76% in 2016-17", highlighting that this was a matter for community agencies such as the PSNI, the Public Prosecution Service and the NI Courts and Tribunals Service to address.³³⁸ During 2019/20, 84 of the 126 individuals in custody (67%) self-identified as Catholic, 16 (13%) as Protestant, 3 (2%) had other religions, 7 (6%) had no religious belief, and for 16 (13%) their religion was unknown.³³⁹

³³⁵ See: Include Youth responses to consultations, including: *Response to Pre-Consultation on Improving Children's Lives*; *Response to Improving Children's Lives*; *Response to Children and Young People's Strategy 2017-2027*; *Response to NICCY Corporate Plan 2020-2023*. All available at: <http://www.includeyouth.org/policy/submissions>

³³⁶ Youth Justice Review (2011) *A Review of the Youth Justice System in Northern Ireland*, Department of Justice *A Review of the Youth Justice System in Northern Ireland*, Department of Justice, p78

³³⁷ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p35

³³⁸ CJINI (2018) *An Announced Inspection of Woodlands Juvenile Justice Centre*, June 2018, CJINI/RQIA/ ETI, p15

³³⁹ Brown, T. (2020) *Northern Ireland Youth Justice Agency Annual Workload Statistics 2019/20*, 15 October 2020, Department of Justice, p34

This compares with 45% of the NI population identifying as Catholic, 48% as Protestant in the 2011 Census, with 51% of school children defined Catholic, 37% Protestant, 12-13% 'other' in 2018, See: <https://www.bbc.co.uk/news/uk-northern-ireland-43823506>

Questions:

- What measures have the Northern Ireland Executive taken to:
 - raise the age of criminal responsibility, in compliance with the CRC Committee's recommendations?
 - address continuing delay in youth justice cases?
 - implement community-based diversionary measures outside the formal justice system, with appropriate safeguards (including informed and voluntary consent, access to legal advice, and no criminal record resulting from use of diversionary measures)?
 - ensure children are not detained due to lack of alternative accommodation, unjustified bail conditions or homelessness?
 - ensure children with disabilities or mental health needs, care experienced children and Catholic children are not inappropriately detained in custody?

APPENDIX 1: SUGGESTED QUESTIONS

GENERAL MEASURES OF IMPLEMENTATION OF THE UNCRC

Legislation

- How will the UK government:
 - ensure current rights protections, including enforcement and remedies, enjoyed under the ECHR and the *Human Rights Act 1998* and provided for in the *Belfast/Good Friday Agreement* are maintained in any future legislation which amends or repeals this Act?
 - ensure there will be no diminution of children's rights, including enforcement, post Brexit?
 - replace the protections of the *EU Charter of Fundamental Rights* and strengthen domestic human rights frameworks for children following the UK's exit from the EU?
- What arrangements have the UK and NI governments made with the EU, and bilaterally with Ireland, to ensure an open border?
- How will the UK government ensure that children in NI who identify as 'British' retain the same rights entitlements and protections as children identifying as 'Irish' and other EU citizens post Brexit?
- When will the UK Government legislate for a *Bill of Rights for NI*?
- How did the UK and NI governments ensure emergency legislation introduced during the COVID-19 pandemic was compliant with international human rights standards?
 - were children's rights impact assessments undertaken before introducing emergency legislation?
 - were steps taken to ensure no differential adverse impact on children?
 - has emergency legislation, and associated measures, been repealed?

Comprehensive policy and strategy

- Is the *Children and Young People's Strategy for Northern Ireland* accepted as the delivery mechanism for UNCRC implementation?
- Will the NI Executive ensure sufficient resources, timelines and a monitoring/evaluation framework for implementation of this Strategy and associated action plan?

Coordination

- When will the NI Executive appoint a Minister with overall responsibility for children, with the mandate, authority and resources to ensure cross-Departmental UNCRC implementation?

Allocation of resources

- What measures are being taken to introduce children's budgeting in NI, including to track allocation, use of resources for children, and defined budgetary lines for disadvantaged or vulnerable children who may require affirmative social measures, including in situations of emergency and economic recession?

Data collection

- When will the NI Executive develop and implement a child rights indicator framework, covering every area of the UNCRC, to be used by all duty bearers?

Independent monitoring

- When will the NI Executive amend *The Commissioner for Children and Young People (Northern Ireland) Order 2003* to strengthen the Commissioner's independence, in line with the Paris Principles and General Comment No. 2?

Making the UNCRC widely known to children and adults

- When will the NI Executive:
 - fund mandatory training on the UNCRC, children's and human rights for professionals working with/for children?
 - include the UNCRC and children's rights in the NI statutory curriculum?
 - ensure that the UNCRC principles are integrated into school policies and practices?

DEFINITION OF THE CHILD

- When will the NI Executive repeal all legal provisions permitting the marriage of children and increase the minimum age for marriage to 18 years?

GENERAL PRINCIPLES

Non-discrimination

- When will the NI Executive introduce Age Discrimination legislation to protect all children from all forms of discrimination on the grounds of age and ensure effective remedies?

- What measures are being taken by the NI Executive to:
 - strengthen awareness of, and prevent, discrimination experienced by specific groups including: children living in poverty; disabled children; Looked After Children and care leavers; Irish language speakers; Roma; Travellers; migrants; children belonging to minority ethnic groups; asylum seeking and refugee children; LGBT+ children?
 - implement and resource programmes to support disadvantaged/vulnerable children and ensure they do not face inequalities in education, training, employment, health, accommodation?
 - ensure all discrimination against children is effectively addressed?

Best interests of the child

- What measures have been taken by the NI Executive to:
 - ensure that the ‘best interests’ principle is consistently interpreted and applied in all legislative, administrative, judicial proceedings and decisions, policies and programmes that impact on children?
 - develop and implement guidance for duty bearers for determining the best interests of the child and giving this due weight as a primary consideration?

Right to life, survival and development

- Can the NI Executive:
 - explain why the establishment of a process to review child deaths remains outstanding, despite being in law for over 9 years?
 - provide a clear timescale for the implementation of a Child Death Review Panel?

Respect for the views of the child

- What measures have the NI Executive taken to ensure that children’s participation informs legislation, policy, service development/delivery/evaluation, including in relation to COVID-19-?
- How will the NI Executive ensure the Youth Assembly provides a structure for meaningful participation of children, including younger and disadvantaged or vulnerable children, in the development of laws, policies and services?

CIVIL RIGHTS AND FREEDOMS

Nationality

- What measures have been taken by the NI Executive to:

- guarantee the right of EU migrant children who are LAC to relevant documents proving their self-identity and citizenship?
- provide culturally appropriate alternative care for migrant children?

Freedom of thought, conscience and religion

- When will the NI Executive:
 - repeal the requirement for schools to provide collective worship, replacing it with non-discriminating assemblies?
 - give children the right to withdraw from compulsory attendance at collective worship in school?
 - ensure meaningful educational alternatives for children whose parents have withdrawn them from collective worship, guaranteeing their spiritual, moral, social, and cultural development is not disadvantaged?

Freedom of association and peaceful assembly

- When will the NI Executive prohibit the use of acoustic devices in public spaces to disperse gatherings of children?

Right to privacy

- What measures are being taken by the NI Executive to:
 - end the disproportionate use of stop and search against children?
 - ensure police accountability, including compliance with the UNCRC, in PSNI use of stop and search powers against children?
- What measures are being taken by the NI Executive to:
 - reform legislation to ensure that children who are arrested have the right to anonymity?
 - implement measures to ensure the right to privacy for the children of alleged offenders?

VIOLENCE AGAINST CHILDREN

Torture and other cruel or degrading treatment or punishment

- What measures have been taken by the NI Executive to:
 - prohibit the use of Tasers, AEPs, CS spray and other harmful devices on children, in compliance with international human rights standards?
 - prohibit the use of spit and bite guards on children at any time, in any circumstances?

Corporal punishment

- When will the NI Executive abolish corporal punishment through repeal of the defence of 'reasonable chastisement'?
- What has the NI Executive done to promote positive, non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity?

Violence, abuse and neglect

- What measures have the NI Executive taken to:
 - combat the abuse and neglect of children?
 - allocate requisite funding and resources, ensuring all vulnerable children receive timely and adequate support to protect them from abuse and neglect?
 - enhance systematic health data collection concerning child protection and ensure routine recording and sharing of information, and referral where appropriate, are embedded across Health and Social Care Services?
 - introduce legislation, plus resource, implement, monitor and review the effectiveness of its *e- Safety Strategy*?
- Will the NI Executive detail:
 - its plans and timeframe for improving disaggregated data collection regarding child victims of domestic violence?
 - measures taken to ensure provision of appropriate support for child victims of domestic violence?
 - why children were not included as victims of domestic abuse in their own right in recent *Domestic Abuse and Family Proceedings* legislation?

Sexual exploitation and abuse

- What measures have been taken by the NI Executive to:
 - develop comprehensive services to support children who are victims, or at risk of, sexual exploitation and abuse?
 - strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse?
 - grant effective remedies to child victims of sexual exploitation and abuse?
 - ensure full implementation and monitoring of the 2014 Marshall Inquiry recommendations?

Freedom of the child from all forms of violence

- What measures are being taken by the NI Executive to protect children from assaults, intimidation, and racist attacks by paramilitary organisations?

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Family environment

- What measures have been taken by the NI Executive to:
 - develop and implement a comprehensive, fully costed Childcare Strategy underpinned by rights-based legislation?
 - ensure that all NI families can access affordable, high quality childcare, protecting the child's right to development without discrimination?
- What measures are being implemented by the NI Executive to:
 - raise awareness of the benefits of separated parents co-parenting, based on the best interests of their children?
 - ensure children's right to maintain personal relations and direct contact with both parents when their parents separate, providing there is no risk to the child, including during emergencies (e.g. the Coronavirus pandemic)?

Children deprived of a family environment

- When will the NI Executive enact:
 - the *Adoption and Children (NI) Bill*?
 - revised Foster Care regulations?
- What has the NI Executive done to develop and implement minimum standards prioritising the best interest of the child to ensure statutory and independent care providers, including for-profit companies, deliver appropriate care?
- What measures have the NI Executive taken to ensure:
 - appropriate resourcing of children's social care, including early intervention to support families at the edges of care and recruitment of foster carers?
 - meaningful participation of care experienced children in decisions affecting their lives?
 - adequate and appropriate support for children in and leaving care, including access to education/training/employment and timely provision of appropriate accommodation?
- What measures have the NI Executive taken to ensure alternatives to secure accommodation which deprives children of their liberty, including appropriate community-based support for vulnerable children with complex needs?

Children of incarcerated parents

- What measures have the NI Executive put in place to ensure that:

- a child can maintain their relationship and contact with an incarcerated parent when there is no court order preventing contact, including during emergencies such as COVID-19?
- children of incarcerated parents receive appropriate information, support and advocacy?

DISABILITY, BASIC HEALTH AND WELFARE

Children with disabilities

- What measures have been taken by the NI Executive to establish disaggregated baseline data on children with disabilities and long-term conditions to enable discharge of the statutory equality duty under Section 75 *Northern Ireland Act 1998* and so ensure implementation of disabled children's rights?
- What measures have the NI Executive put in place to ensure appropriate provision of services for disabled children, based on individual needs, including as they transition from children's services to adult services?
- What measures have been taken by the NI Executive to:
 - address deficiencies in availability of safe, inclusive, accessible spaces for play, leisure and socialising that meet the needs of children of all abilities?
 - address negative attitudes towards children with disabilities within play facilities and more broadly in NI?

Health and health services

- Will the NI Executive extend the 'welfare' principle to the healthcare sector so that this principle will determine the provision of necessary prescription, procedures and care even when these cannot be accessed via publicly delivered healthcare?

Mental health

- Will the NI Executive:
 - regularly collect disaggregated data on the prevalence of children's poor mental health?
 - adopt a universal, preventative approach to support positive emotional wellbeing for all children?
 - end age discrimination in the funding of mental health services, properly fund CAMHS and ensure service provision meets need?
 - ensure that children have access to appropriate CAMHS to meet their needs, when required, with particular attention to: younger children; disabled children; children affected by conflict, trauma, abuse and neglect; children living in poverty; children

- in care; children in contact with the criminal justice system; LGBT+ children; trafficked, refugee and asylum seeking children?
 - fund provision of school-based counselling for all pupils?
- Will the NI Executive urgently address, including appropriate resourcing, the impact of the COVID-19 pandemic on children’s mental health and wellbeing?
- What measures have been taken by the UK Government and NI Executive to:
 - address the specific needs of children experiencing transgenerational trauma as a result of the conflict?
 - ensure the participation of children in processes and programmes to deal with the legacy of the conflict?
 - address the mental health needs of children whose lives are affected by paramilitary threat and/or violence?
- What measures are being taken by the NI Executive to:
 - address the exclusion of under-16s from the provisions, including protections, of the *Mental Capacity Act (NI) 2016*?
 - ensure NI mental health legislation is UNCRC compliant, including complying with the UK Supreme Court ruling in the matter of D (A child) [2019] regarding deprivation of liberty?
- What measures are being taken by the NI Executive to:
 - address delays in discharge from hospital for children with learning disability and co-occurring mental health needs?
 - adequately resource accommodation required to enable children who need supported living to live fulfilling lives outside of hospital?
- What measures are being taken by the NI Executive to provide a specialised Mother and Baby Unit where women who are psychiatric in-patients can care for their babies, and make interim arrangements to ensure babies are not separated from their mothers when it is in both their best interests to be kept together?

Adolescent health

- What measures have been taken by the NI Executive to:
 - determine the prevalence of drug and alcohol use amongst children in NI?
 - provide adequate and suitable provision for children with drug and alcohol issues, particularly when combined with mental health needs?
 - ensure all children with co-occurring mental health conditions and drug/alcohol issues enjoy the same legislative protections as adults?

- What measures are being taken by the NI Executive to:
 - ensure all schools are implementing comprehensive RSE programmes, including age-appropriate information about: confidential sexual and reproductive healthcare services; contraceptives; prevention of sexual abuse or exploitation, including sexual bullying; supports available in cases of sexual abuse and exploitation; and sexuality, including that of LGBT+ children?
 - ensure teachers have the knowledge, skills and confidence to deliver age-appropriate RSE?
 - abolish parents' ability to withdraw their children from RSE and, in the meantime, ensure children who are removed from RSE lessons receive information on relationships and sex?

- What measures are being taken by the NI Executive to ensure the provision of abortion services which guarantees that no young woman has to travel outside NI to access reproductive health care?

Nutrition

- What measures are being taken by the NI Executive to:
 - systematically collect data to identify root causes of child food insecurity and malnutrition (including during emergencies like the Coronavirus pandemic) to inform policies/programmes?
 - regularly monitor and assess the effectiveness of policies/programmes intended to address food insecurity and malnutrition, including: school meal programmes, food banks, food parcels, emergency measures during the Coronavirus pandemic?
 - ensure food security for every child in NI, regardless of immigration status?

Standard of living

- What measures are being taken by the NI Executive to:
 - address the fact that the 2020 target to reduce/eradicate child poverty has not been met?
 - establish clear accountability mechanisms for child poverty eradication including a Strategy beyond 2022, with concrete targets, set timeframes and measurable indicators to identify impacts of poverty and inequalities, plus monitoring and reporting processes?
 - implement policies and practices to better support children living in poverty, including mitigating inequalities in education, housing, and health outcomes?
 - undertake a comprehensive assessment of the cumulative impact of the Coronavirus pandemic and welfare reforms on children and mitigate adverse impacts?

- What is the UK Government doing to ensure that children of asylum seekers do not endure severe poverty and periods of enforced destitution?
- Will the Home Office lift the 'No recourse to public funds' designation from asylum seekers whose claims have been rejected?
- Will the NI Executive lift the ban on asylum seeking parents working, and ensure that asylum seeking children are able to access essential services?
- When will the NI Executive:
 - enact legislation prohibiting placement of children by public authorities in temporary and/or unregulated accommodation?
 - address the systemic failure to ensure the rights of homeless children?
 - enforce the duty to provide suitable accommodation for LAC and children in need?
 - reduce homelessness and guarantee all children access to housing that provides physical safety, adequate space, protection against threats to health and structural hazards (including cold, damp, heat, pollution), and is accessible for children with disabilities?
 - address the fact that, according to Housing Executive evidence, housing shortage and children's housing need are disproportionately prevalent in areas that are predominately Catholic?
- What measures has the NI Executive put in place to ensure that *all* children and young people have access to decent, affordable digital connectivity and technology?

EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Education

- What measures are being taken by the NI Executive to:
 - address inequalities in education generally, and the low educational outcomes of specific groups, including: Travellers, Roma, care experienced children, those unable to attend school for a period of time, deaf children, children with SEN or disabilities, refugee and asylum seeking children?
 - collect disaggregated data about the educational experiences of groups at risk of educational inequality, to inform policy and practice?
 - ensure the right to education for children with a statement of SEN?
 - enable the co-ordination of care appointments for children with health needs to ensure maximum attendance at school?
 - reduce the widening attainment gap for deaf children and arrest decline in numbers of specialist Teachers of the Deaf?

- make the SEN assessment and statementing process fit for purpose, effectively support children going through this process and ensure the best possible outcomes for children with SEN?
 - ensure legal compliance with the SEN and Disability framework, and enable full access to inclusive education through provision of necessary human/ financial resources?
 - ensure the adoption of positive attitudes towards cultural diversity and equality in schools, with development of welcoming and inclusive environments for refugee and asylum seeking children?
- What measures are being taken by the NI Executive to end informal school exclusions of children with SEN/disabilities?
 - What measures are the NI Executive taking to end academic selection and replace it with a children’s rights compliant system that ends educational inequalities?
 - What measures have the NI Executive taken to ensure that legislation to address school bullying is commenced and effectively implemented to protect all children?
 - What measures does the NI Executive have in place to:
 - establish a time-bound implementation plan for the recommendations of the 2016 Independent Review of Integrated Education?
 - increase integrated school provision, including capital and revenue funding, to meet demand and the statutory duty “to encourage and facilitate the development of integrated education”?
 - address shortcomings of shared education, including it being predicated on bringing together children of different religions with no reference to those holding non-religious beliefs?
 - conduct an independent review of NI education provision, as agreed in March 2020?
 - What measures have the NI Executive in place to:
 - ensure evolution is explicitly included in the statutory science curriculum in all schools?
 - prevent schools teaching creationism, intelligent design and other pseudoscientific theories as evidence based?
 - What measures have the NI Executive taken to:
 - address the core RE syllabus being designed by the four main Christian churches, with no involvement of representatives from non-religious or minority faiths?
 - ensure the NI RE curriculum acknowledges and respects the beliefs of children with no religion and those with minority faiths?

- What measures are being taken by the NI Executive to:
 - assess the impact of legislation and policies introduced in response to the COVID-19 pandemic on children, including those at risk of educational inequalities?
 - address the adverse impact of COVID-19 emergency legislation on children’s educational attainment and ensure that children most disadvantaged by the interruption of their education are adequately supported?
 - ensure future emergency legislation guarantees children’s right to education, including ensuring all children have access to required equipment, internet access, resources and educational support?
 - ensure inter-departmental cooperation, particularly between Health and Education, to enable identification of vulnerable children and effective multi-disciplinary working to guarantee children’s education, safety and wellbeing during future emergencies?

Rest, leisure, play, recreational activities, cultural and artistic activities

- What measures have the NI Executive taken to:
 - review its 2011 *Play and Leisure Implementation Plan* and provide an updated, funded plan to deliver every child’s right to play?
 - introduce a statutory duty for play?
 - work with Councils and/or community planning partnerships to embed and support the inclusion of play within local policies and strategies?
 - ensure public spaces are child/play friendly, and that age-appropriate, safe, accessible, inclusive and smoke-free play and recreation spaces are developed in consultation with children?
 - ensure the negative impacts of COVID-19 on children’s right to play are urgently addressed?
 - support vulnerable children whose mental health and social development have been affected by COVID-19 lockdowns, including restricted access to play?

SPECIAL PROTECTION MEASURES

Asylum-seeking and refugee children

- Given the UK Government recognises the need for a refugee adult to enjoy family reunion with their spouse and dependent children, what action is being taken to recognise the equal (or greater) right for a child to enjoy family reunion with their parents and minor siblings?

Children affected by armed conflict

- What is the legal basis for denying the family of a child, killed by UK Security Forces, access to government files?

- What 'national security' issues are raised in the circumstances surrounding the killing of a child by a police officer or British soldier firing a plastic bullet?

Administration of juvenile justice

- What measures have the NI Executive taken to:
 - raise the age of criminal responsibility, in compliance with the CRC Committee's recommendations?
 - address continuing delay in youth justice cases?
 - implement community-based diversionary measures outside the formal justice system, with appropriate safeguards (including informed and voluntary consent, access to legal advice, and no criminal record resulting from use of diversionary measures)?
 - ensure children are not detained due to lack of alternative accommodation, unjustified bail conditions or homelessness?
 - ensure children with learning disabilities or mental health needs, care experienced children, and Catholic children are not inappropriately detained in custody?

APPENDIX 2: ENDORSEMENTS AND SUBMISSION OF INFORMATION

We the undersigned endorse this submission to inform the CRC's List of Issues Prior to Reporting:

Organisations

1. Action for Children (NI)
2. Barnardo's (NI)*
3. Cara-Friend
4. Children in Northern Ireland*
5. Children's Law Centre (CLC)*
6. Colin Neighbourhood Partnership
7. Committee for Administration of Justice (CAJ)*
8. Conradh na Gaeilge*
9. Early Years
10. Employers for Childcare*
11. Extern (NI)
12. Focus: The Identity Trust*
13. Human Rights Consortium*
14. Include Youth*
15. Integrated Education Fund*
16. Law Centre (NI)
17. Mencap Northern Ireland
18. National Children's Bureau (NCB) (NI)*
19. National Deaf Children's Society (NDCS) (NI)*
20. National Society for the Protection of Cruelty to Children (NSPCC) (NI)*
21. NIACRO*
22. Northern Ireland Humanists*
23. Northern Ireland Women's European Platform
24. Northern Ireland Youth Forum*
25. Participation and Practice of Rights (PPR)*
26. Pat Finucane Centre*
27. Parenting NI*
28. PlayBoard NI*
29. Relatives for Justice*
30. Royal National Institute of Blind People (RNIB) (NI)
31. Rural Community Network
32. Save the Children (NI)
33. South Tyrone Empowerment Programme (STEP)*
34. Quaker Service
35. Royal College of Paediatrics and Child Health (RCPCH) (NI)*
36. Start 360*
37. The Fostering Network*
38. The Rainbow Project
39. Voice of Young People in Care (VOYPIC)*

Individuals

1. Conchúr Ó Muadaigh*
2. Dr Dirk Schubotz, Senior Lecturer, School of Social Sciences, Education and Social Work, Queen's University Belfast*
3. Dr Elizabeth Agnew, School of Law, Queen's University Belfast*
4. Dr Goretti Horgan, Lecturer in Social Policy, Ulster University*
5. Dr John Topping, Senior Lecturer in Criminology, School of Social Sciences, Education & Social Work, Queen's University Belfast*
6. Dr Siobhan McAlister, Senior Lecturer in Criminology, School of Social Sciences, Education and Social Work, Queen's University Belfast
7. Monye Anyadike-Danes, QC*
8. Professor Laura Lundy, Centre for Children's Rights, Queen's University Belfast
9. Professor Phil Scraton, School of Law, Queen's University Belfast

**Organisations/ individuals also contributed information to assist the writing of the NI NGO Stakeholder Report to Inform the CRC's List of Issues Prior to Reporting and Supporting Evidence Report.*

The following organisations contributed invaluable information which helped formulate these Reports:

1. Family Mediation NI
2. NI Council for Integrated Education