

# Children's Law Centre

BRIEFING PAPER

## THE CHILDREN'S SERVICES COOPERATION ACT (NI) 2015



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Children's Rights  
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## INTRODUCTION AND BACKGROUND

**The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.**

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we provide a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents as well as a Live Chat service for young people.

Since its establishment in 1997, CLC has provided free legal advice and information as well as strategic legal representation on a growing and increasingly complex range of issues affecting children and young people under the age of 18.

CLC has developed considerable specialist expertise in Special Educational Needs and Disability (SEND) law across our advice and legal team and through employment of a dedicated SEND Specialist Legal Advisor. SEND casework has become a core part of CLC's work, due to an ever-increasing level of demand for support for children to unable to access their right to education.

Our advice service data shows that in 2011, 35% of the total advice queries we received related to education and 51% of those education queries (377) related to SEN. In 2023, over a decade later, 63% of total advice queries received related to education and 71% of those education queries (1,240) related to SEN.

Importantly, CLC was founded upon the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and leads for the NI NGO sector in co-ordinating the submission of evidence to the United Nations Committee on the Rights of the Child to inform their monitoring and reporting work on the UK's compliance with children's rights standards.

## CHILDREN'S SERVICES IN MELTDOWN

**Through its legal advice and casework CLC sees that the disjointed nature of children's services planning and delivery in Northern Ireland. This, coupled with extreme budgetary pressures, is resulting in missed opportunities for preventative work which lead to failures of early intervention regarding special educational needs and disability (SEND) and health and social care support.**

To ensure effective use of scarce resources and to secure earlier, lower cost interventions, which have better outcomes for children, it is an absolute necessity that creative approaches to co-operation across departments, public authorities and children's services providers across all sectors are designed according to evidence of need.

Notably, it has come to light in a wide series of reports that current structures for the delivery of children's services are not working for children and young people and their families. These include the NICCY "Too Little, Too Late" report (March 2020)<sup>1</sup>, two reports on SEN from the NI Audit Office (June 2017<sup>2</sup> and September 2020<sup>3</sup>), a Public Accounts Committee report on SEN (February 2021)<sup>4</sup>, A Fair Start – Final Report and Action Plan (endorsed by the Executive, May 2021)<sup>5</sup>, NICCY – Neither Seen Nor Heard (December 2021)<sup>6</sup>, Baker Tilly Mooney Moore Landscape Review of the Education Authority (June 2022)<sup>7</sup>, IPSOS Review of SEN Service and Processes (May 2023)<sup>8</sup>, Independent Review of Children's Social Care Services in Northern Ireland (June 2023)<sup>9</sup>, and the Independent Review of Education: Investing in a Better Future report (December 2023)<sup>10</sup>.

The sheer volume of reviewing and reporting which is either focussed upon or crosses into the domain of SEND indicates that children with SEND are disproportionately affected by the failure of systems which have been set up to provide for their needs. In CLC's legal casework, we see that children with the most complex needs, alongside their siblings and families, are suffering the highest degree of hardship due to unrelenting failures of provision and failures of co-operation and resource/skills pooling across public authorities that are responsible for children's services provision.

It is noteworthy that all of the above reports post-date the enactment of the Children's Services Co-operation Act (NI) 2015.

The intentions of the Northern Ireland Assembly have not been realised which should, for all elected representatives, be a cause for concern. Children's services are in meltdown. CLC meets with children and families who feel they have been cast adrift by providers whose function is to identify

and meet their needs and to promote equality of opportunity. These families report that they have been left to fend for themselves in the absence of properly functioning health, social care and education services, with devastating consequences.

# THE CHILDREN'S SERVICES COOPERATION ACT (NI) 2015

**The Children's Services Co-operation Act (NI) 2015<sup>11</sup> was enacted by the Northern Ireland Assembly in recognition of the damaging impacts and inefficiencies inherent in “silo” working and to enable implementation of joined-up, collaborative working across all children’s services which contribute to the well-being of children and young people.**

Guidance on the Children's Services Co-operation Act<sup>12</sup> was issued in 2018 and revised by the Department of Education in March 2022.

## IMPROVING WELL-BEING

**The express purpose of the Act, stated in section 1, is improving the well-being of children and young people.**

Eight elements which contribute to well-being are:

- a. Physical and mental health.
- b. The enjoyment of play and leisure.
- c. Learning and achievement.
- d. Living in safety and with stability.
- e. Economic and environmental well-being.
- f. The making by them of a positive contribution to society.
- g. Living in a society which respects their rights.
- h. Living in a society in which equality of opportunity and good relations are promoted between persons who share a relevant characteristic and persons who do not share that characteristic (i.e. Section 75 characteristics, in The Northern Ireland Act 1998).

The United Nations Convention in the Rights of the Child (UNCRC) informs the interpretation of “well-being”. The Act provides that regard is to be had to any relevant provision of the UNCRC when determining the meaning of “well-being”. For example, “learning and achievement” would be interpreted in line with article 29 of the UNCRC, which provides that children should be enabled to develop their personality, talents and mental and physical abilities to their fullest potential; education should enable development of respect for human rights as well as respect for the child’s parents, and development of respect for the child’s own cultural identity, language and values.

Rather than an improvement in the well-being of children and young people, CLC has been witness to a significant and severe deterioration in the well-being of our client base from 2015 to the current time, with children and families experiencing a bewildering array of barriers and challenges as they attempt to go about their day to day lives.



# MANDATORY LEGAL DUTY TO COOPERATE: A COLLECTIVE RESPONSIBILITY

**Section 2 of the Act imposes a mandatory legal duty upon every children's authority to co-operate with each other and with other children's services providers when exercising children's functions, which would include designing, implementing and providing children's services. The Executive must make arrangements to promote such co-operation.**

Under section 3, the Executive must adopt a children and young person's strategy setting out how it proposes to improve the well-being of children and young people.

The Children and Young People's Strategy 2020 - 2030<sup>13</sup> was approved by the Executive on 10th December 2020. The Department of Education takes a co-ordinating role but all departments carry collective responsibility for the arrangements. The strategy commits to creation of a Data Development Plan to collect relevant data, including baseline data, to inform the strategy. Monitoring is based upon a selection of strategic population-level indicators. Reporting structures are to be aligned with the Programme for Government (PfG) (which under section 6 should be informed by reports on the operation of the Act) and will, like the PfG, use an Outcomes Based Accountability (OBA) approach.

The Delivery Plan for the Strategy is stated to focus on actions that will address the issues and groups of children and young people that have been identified as requiring the greatest focus. In CLC's view, all data should be relevant to and disaggregated by the eight elements of well-being and by section 75 characteristics to enable compliance with the requirements of section 1 regarding improving well-being.

Fundamental to success, in CLC's view, is provision targeted towards the needs of the most vulnerable groups children and young people, including those with legally protected equality characteristics, those living in socio-economic deprivation and children looked after by public authorities. The public need to be able to clearly see what measurable difference the implementation of the duty to co-operate is making to the well-being of children and young people.

Effective short, medium and long-term implementation through sustainable resourcing is essential, alongside close monitoring across departments of cumulative impacts and outcomes for children and young people regarding the eight elements of well-being identified within the Act.

## POOLING OF RESOURCES: STAFF, GOODS, SERVICES, ACCOMMODATION, FUNDING ETC.

**Section 4 contains an enabling power for children's authorities to pool resources (including staff, goods, services, accommodation or other resources) and to make contributions to a fund from which relevant payments may be made to contributing service providers to enable them to carry out their functions.**

Despite a duty upon the Executive, under section 5, to report on the operation of the Act and to establish how further opportunities for co-operation can be developed, there has been no such report, and it is entirely unclear to what degree any such sharing of resources or pooling of funds is actually taking place or what the impact has been, if any, on the eight elements of well-being for children and young people.

CLC are aware that budget cuts to the EA SEND Transformation projects appear to have resulted in a change of plan which moves away from integration of health and education services for children with SEND. The "Local Integrated Teams" which EA is developing as an alternative to free standing pupil support services, is a pale imitation of the previous plan for integrated multi-disciplinary teams which were to have included HSCT staff in an effort to provide holistic early intervention for children with SEND.

If these local teams are to be the bedrock of early intervention regarding SEND, then funding should be available to enable maximum children's services co-operation as part of the implementation of the Act. How, for example, will an EA only pupil support team, provide effective intervention, including allied health therapies, for a pupil with cerebral palsy who is attending a mainstream school?

Further, CLC is dealing with multiple severe and urgent cases where children with complex disabilities have been unable to access respite or accommodation, at times simultaneously with school placement breakdown. Children with complex needs require a consistent and holistic approach with a high level of multi-disciplinary expertise and access to properly planned services. Pooled resources, financial and otherwise, including pooled data about the child and family's needs, are tools which do not appear to have been deployed to enable staff to provide wraparound support at the time it is needed and in the place where it needed.

## INTERACTION WITH PROSPECTIVE SEND LEGISLATION

Section 4 of the Special Educational Needs and Disability (NI) Act 2016<sup>14</sup> (the “SEND Act”), provides, in the exercise of their respective functions under the CSCA, for co-operation between the EA and HSCTs to identify, assess and provide services to children with special educational needs and to co-operate relation to transition planning. This SEN co-operation clause (which resulted from an amendment proposed by a previous Northern Ireland Assembly Committee for Education) is intended to be inserted as an amendment to the Education (NI) Order 1996 which governs SEN, and the clause goes into some detail about how health/education co-operation should work, to include information sharing and the establishment of joint inspection teams across ETI and RQIA.

The majority of the SEND Act, including this section, has yet to be commenced.

It is unclear what level of background work has been undertaken by the relevant children's services authorities to work towards implementation of this important provision.

“SEND Transformation” through the creation of “EA-only” integrated teams as currently formulated due to budget cuts, lacks vision and ambition for children with SEND and as such is highly unlikely to be transformative.

It is clear to CLC that appropriate planning, design, funding and financial structures are required to enable realisation of this important provision of the SEND Act and that if these were agreed and put in place, section 4 of the SEND Act could be commenced with a view to enabling the establishment of properly constituted, jointly funded, multi-disciplinary teams to identify assess and provide for the needs of children with SEND from their earliest years and throughout the lifespan of the educational journey.

The commencement of the provisions within section 4 of the SEND Act should be considered as a priority by the Department of Education, together with the Department of Health.

# FINANCIAL STRUCTURES FOR POOLING FUNDS

**Section 8 of the CSCA empowers the Department of Finance to make provision through regulations for procedures to be followed when pooling resources.**

It is CLC's understanding that without appropriate financial structures in place, with the aim of making it easy to co-operate and clear information on how to facilitate this, it is not possible to make significant progress towards the use of pooled funds on a scale that can make a significant contribution to the well-being of children and young people. Indeed, from what CLC can observe, progress appears minimal, piecemeal and coincidental to existing work.

As well as scrutinizing structural barriers to efficient delivery of children's services within public authorities, such as the EA or HSCTs, CLC urges decision-makers to scrutinize financial barriers to the use of pooled budgets by children's services providers.

The power to share and pool all types of resources and to integrate service-provision for the well-being of children and young people requires to be rapidly progressed into widescale action, including through regulation by the Department of Finance in co-operation with all other government departments to put appropriate financial structures, mechanisms and controls in place, alongside information about how a pooled budget can be set up for a particular children's services co-operation workstream.

## CONCLUSION

**It is well known from the multiple available reports what the problems are with the delivery of children's services. Hard-pressed children and families cannot afford to wait any longer.**

It is now essential for children's authorities together with children's services providers to explore all possibilities for the creation of effective solutions, in consultation with service users and service-based staff.

The full potential of the Children's Services Co-operation Act (NI) 2015 should be maximised as intended by the Northern Ireland Assembly when it stepped up to enact this innovative piece of legislation to improve the well-being of all children and young people.

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