

**Response to the Department of Health, Social Services
and Public Safety consultation on Families Matter:
Supporting Families in Northern Ireland**

Children's Law Centre

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Introduction

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and 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 run an advice/ information/ representation service. We have a dedicated free phone advice line for children and young people and their parents called CHALKY and a youth advisory group called Youth@clc.

Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as an organisation, which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to make this submission to the Department of Health, Social Services and Public Safety (DHSSPS) and to offer assistance in developing Families Matter: Supporting Families in Northern Ireland (Families Matter).

Consultation

We wish to inquire how the DHSSPS has carried out direct consultation with children and young people in respect of this draft Strategy document. There have been a number of problems in relation to direct consultation with the section 75 groups, especially children and young people, some of which have resulted in invoking the Equality Commission's formal complaints procedures. It is vital that the DHSSPS, in developing a Strategy for Families which is a 'supporting pillar' of the overarching Children's Strategy, is seen as carrying out, promoting and encouraging meaningful and direct consultation and participation with children and young people as per its statutory obligations under section 75 of the Northern Ireland Act 1998. This is particularly important in complying with Article 12 of the UNCRC, one of the principles of the Convention – Respect for the Views of the Child. In examining the Government's compliance with Article 12, the UNCRC Committee, in the UK's last examination in 2002, recommended that the Government,

“...take further steps to promote, facilitate and monitor systematic, meaningful and effective participation of all groups of children in society”.

We would be grateful if the Department would respond with details of how they have consulted directly with children and young people, including marginalised children and young people, and how extensively this process was carried out.

We are very concerned to note the following statement in the consultation document,

“The Department is now screening the proposals set out in this consultation document and as part of the screening process” (Page 44)

This is very concerning in that it proposes that the screening process is to be carried out on this Strategy after consultation has taken place on the proposals contained within the Strategy itself, without regard to equality considerations. We believe that this is contrary to the letter and spirit of section 75 of the Northern Ireland Act 1998 which intends for equality concerns to be central to the policy decision-making process. This involves consideration of section 75 at the very beginning stages of a policy’s development and implementation. The Equality Commission’s Guidance for Implementing Section 75 of the Northern Ireland Act 1998 states that,

“1.4 The new statutory duties make equality central to the whole range of public policy decision-making. This approach is often referred to as “mainstreaming”. The Council of Europe has defined mainstreaming as:

“the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making”. (Gender mainstreaming conceptual framework, methodology and presentation of good practices. Council of Europe, Strasbourg May 1998)

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy, not merely at the end of the process when decisions have been taken in relation to the policy with no regard shown to section 75. Because of the pre-consultative nature of both the screening and EQIA processes it is vital that a comprehensive screening process takes place and where a policy is to be screened in, a full and thorough EQIA is carried in advance of the consultative process. We therefore recommend that the Department carries out a thorough screening exercise on this proposed Strategy immediately. Representative groups should also be consulted with on this screening exercise in accordance with section 75. If the outcome of the screening process is that there is a need for an EQIA, which we believe there will be with specific reference to the fact that children are not entitled to equality of opportunity in relation to protection from assault as compared to adults, this should be carried out as a matter of urgency, again with full and transparent consultation, including direct consultation with children and young people.

We would also be grateful if the Department would respond with details of the system which they intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses.

This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action or otherwise. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

General Comments

The Children's Law Centre welcomes the development of Families Matter and hopes to have a valuable and constructive input to the final version of the DHSSPS Regional Family and Parenting Strategy, Families Matter. We particularly welcome the emphasis in the document on partnership working between parents, Government, the Department of Health Social Services and Public Safety and voluntary, charitable and community organisations and are supportive of the addition of partnership working as an outcome to the six Children's Strategy outcomes within Families Matter. CLC believes that the importance of partnership working in the delivery of services for families cannot be over emphasised and hope to see a firm commitment demonstrated by all Government Departments both to this Strategy and to partnership working in general. We also welcome the clear relationship between Families Matter and the ten-year Children's Strategy and the commitment in Families Matter to delivering on the shared vision detailed in the Children's Strategy, so much so that Families Matters is regarded as a 'supporting pillar' of the overarching Children's Strategy. We agree that the success of Families Matter depends upon how well the outcomes in key areas of the lives of children and young people in both strategies are met. It is especially welcome to note the inter-relationship detailed in Families Matter which states that this Strategy will help achieve the vision in the Children's Strategy by supporting parents. Again, it is fundamental to the success of Families Matter that all Government Departments display a genuine commitment to the aims, vision, principles and most importantly, outcome of Families Matter to ensure it can deliver cross-departmentally so that all parents can be confident, responsible and empowered in order to help their children reach their full potential.

We believe that in order for partnership working to be as successful and productive as possible that a statutory duty of co-operation should be introduced as proposed by the Four Health and Social Services Board Children and Young People's Committees. We agree with the proposal that there should be a duty on all public bodies to co-operate within the framework of a regional Children and Young People's Strategic Partnership and Plan to deliver on the Children and Young People's Strategy and Families Matter, with a general duty on these public bodies to safeguard and promote both the rights and best interests of all children and young people. We recommend that Government give serious consideration to the proposals of the Four Committees with a view to integrating these proposals within a finalised Families Matter Strategy.

In relation to partnership working between Government and the voluntary and community sectors, there already is an obligation on Government to work in equal partnership in the guise of the Compact between the Government and the Voluntary and Community Sector. We would be very supportive of a renewed commitment to the Compact in the final version of Families Matter in an attempt to demonstrate an unequivocal commitment by Government to equal partnership working with both the voluntary and community sectors. It has been our experience that there is room for a great deal of improvement in the operation of the Compact and we would welcome the principles of the Compact and obligations it places on Government to be placed on a

statutory footing to ensure optimum effectiveness through equal partnership working with the allocation of adequate resources to voluntary and community sector organisations who deliver public services.

As with a number of recently published Government strategies, we have a number of concerns about the lack of detail in relation to the setting of targets. While we support the majority of targets outlined in the draft Strategy, there is no information provided as to why the Department felt that the specific targets chosen will deliver on the Strategy's overall aim to ensure that all parents can be confident, responsible and empowered in order to help their children reach their full potential. It is fundamental in the achievement of an aim that all targets and actions proposed contribute to the entirety of the aim, without gaps or omissions. It is very unclear how the process of choosing targets was carried out, but there appears to be a number of potential gaps and insufficient information has been provided in the consultation document. We would welcome a commitment in Families Matter to actual timescales, and specific, measurable targets with associated indicators. There should be an acknowledgement of the current position of children and young people and baseline data collected so that meaningful targets can be established for the lifetime of the Strategy. Disaggregated data should be collected in line with The UNCRC Committee's General Comment No 5 stresses that,

"...sufficient and reliable data collection on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights" is an essential part of implementation (CRC/GC/2003/5 para. 48)

In addition, the indicators must be child centred and based on the principles of the UNCRC; stating the effect the indicators will have on the lives of the children and young people to whom they refer with a focus on the measurement of progress.

There must be an emphasis on the difference that will be made to the lives of children and young people throughout the implementation of Families Matter and in particular, through the draft targets and associated child rights indicators. In addition, the experiences of children and young people and their families must form part of the indicators in order to balance quantitative and qualitative data to ensure that the reality of experience is captured and the voices of children and young people are heard. There should also be clear identification of responsibility for delivery of the commitments contained within Families Matter and we believe that this should apply from Ministerial level down, giving clear accountability structures and systems which have been put in place to monitor progress and, where necessary, take remedial action.

We also have some concerns that there is not enough emphasis in the Strategy on multiple identity children and young people. There is very little focus on children with disabilities, those with mental health problems, children in alternative family environments, such as foster families, children of different race, religion and sexual orientation and children with dependents. We wish to see this rectified within the final version of the Strategy to take account of the particular circumstances of all children who the Strategy aims to benefit. Children and young people are not a homogeneous group and we wish to see the additional needs of specific groups of children and young people being identified and addressed to ensure that all children reach their full potential through the implementation of the Children's Strategy and Families Matter as a 'supporting pillar' of the over-arching Children's Strategy.

International Children's Rights Standards

CLC welcomes the reference in the draft Strategy to Article 8 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 which upholds the right to family life. However, we have some concerns about the Strategy and its compliance with the UNCRC. The Convention is a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified. It is important to note that Government will again be reporting to the UNCRC Committee later this year and will have to address the issues raised and detail any progress made in relation to the UNCRC Committee's concluding observations (2002). As Families Matter states that it is a 'supporting pillar' of the Children's Strategy, it like the Children's Strategy, should be underpinned by the UNCRC with a firm focus on the rights of the child as per Government's obligations under the UNCRC. A great many of the articles of the UNCRC apply to children and family life and the principles of the UNCRC are all relevant to a discussion of the obligations of Government and the development of a regional family and parenting strategy. Families Matter should have adequate regard to the need to protect the rights of all children detailed in the principles of the UNCRC, namely the rights of all children not to be discriminated against (Article 2), their right to have their best interests upheld (Article 3), their right to survive and develop to the maximum extent possible (Article 6) and the right of children and young people to meaningfully participate in all aspects of their lives (Article 12). More specifically, [Article 18 of the Convention states that,](#)

"1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible."

Also relevant is the preamble to the Convention which states that,

"Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding"

We wish to see adequate weight given to the UNCRC in the development of this Strategy and believe that the final version of the Strategy should have a very clear child rights focus and be underpinned by the UNCRC and specifically by the relevant principles and Articles detailed above.

Vision, Principles and Outcomes

In relation to the Strategy's vision, principles and outcomes, we must reiterate the need for a very firm focus on children's rights. There appears to be an emphasis on child well-being in the Strategy which we believe does not go far enough to meet Government's obligations under the UNCRC. We wish to see a very clear rights basis in framing the vision, principles and outcomes of the Strategy, highlighting the rights of children and young people to develop to their full potential within the family setting. Children have an established right under section 75 of the Northern Ireland Act 1998 and Article 12 of the UNCRC to have their views heard and taken into account in all matters which affect their lives. It is very disappointing to note under the Strategy's principles that stakeholders will merely be, "*encouraged*" to working in partnership in collaboration with children and young people and their families. We wish to see this and more generally the vision, principles and outcomes amended to give sufficient weight to the rights of children and young people under the UNCRC in compliance with Government obligations.

Similarly, we would support the Department amending the principles of the Families Matter strategy to ensure that they are closely aligned with the underpinning values of the over-arching Children and Young People's Strategy, which recognise that all children and young people are unique individuals with their own individual rights, including that of being active participants with a valuable and diverse contribution to make to society.

In relation to the outcomes detailed in Families Matter we welcome the very clear link between these outcomes and those in the Children and Young People's Strategy. We do not believe it is appropriate however that under the outcomes of Families Matter, reference is made to, "*not engaging in anti-social or offending behaviour*". The inclusion of this statement is discriminatory as it implies a presumption that the children who this Strategy aims to help are likely to engage in anti-social behaviour. In addition, the inclusion of "*anti-social behaviour*" without further explanation of what is meant by the term could well be in direct contradiction to the "*keeping safe*" outcome, particularly given the possible implications on child protection and the historical connotations of "*anti-social behaviour*" in Northern Ireland. We wish to see any reference to anti-social behaviour removed from the Strategy with a view to adopting a holistic approach to family life and the needs of children and parents within the family setting.

In relation to the enjoyment of rights outcome, we very firmly support its inclusion but wish to see children's rights as forming the basis to the Strategy as a whole. Research carried out by the Northern Ireland Commissioner for Children and Young People (NICCY) "*Children's Rights in Northern Ireland*" (2004) found that 29% of the children and young people interviewed as part of the research stated that they were concerned at not having a say in family matters (Page 43 and 44). There is very clearly a need for greater information in relation to the rights of children and young people and we would welcome the Department using Families Matter and its associated outcomes as a vehicle to raise awareness of the child's right to have his/her views taken into consideration in all aspects of his/her life, including within the family.

The Scope of the Strategy

We welcome the focus in the Strategy on preventive and early intervention services to support parents at particular times of need and at particular stages in the development of their child. Early intervention and preventative work is vital in ensuring that Government addresses the causes rather than purely the effects of problems in the development of children in the family setting and we are very supportive of its inclusion at the outset of the Strategy. Again, we have some concerns about the lack of emphasis on children and young people as individuals with multiple identities and we feel that greater cognisance should be given to the particular circumstances of individual children and young people in an effort to assume a holistic approach to family support.

Priority Themes

Priority Theme One - Parental Support

In relation to parental support, we welcome the stated emphasis on positive parenting. However, positive parenting is not a legislative provision and does not form part of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, which failed to remove the defence of reasonable chastisement as recommended by the UNCRC Committee and a wealth of children's rights spokespeople. This is a clear violation of children's rights and has only served to make the law in relation to physical even more confusing and unclear. This is demonstrated in the Strategy in that the Department is promoting alternatives to physical punishment, while also being required to uphold law which states that in many instances physical punishment will be permitted. It was in respect of the continued use of the defence of 'reasonable chastisement' in relation to physical punishment that the UNCRC Committee was most critical of the UK Government in its examination in 2002. The UNCRC Committee emphasised its "*deep regret*" that the Government,

"...persists in retaining the defence of reasonable chastisement and has taken no significant action towards prohibiting all corporal punishment of children in the family." (para 36)

The use of physical punishment is the area where children and young people suffer the most blatant discrimination. There are very obvious child abuse issues in relation to the use of physical punishment under the defence of 'reasonable chastisement.' In its recommendations, the UNCRC Committee has called for the Government to outlaw physical punishment and remove the defence of 'reasonable chastisement' as a matter of urgency. (para 38a). The NICCY research concurs with the Committee's recommendation and states that,

"The unequivocal view expressed by the vast majority of children, young people and adults spoken to for the research was that all forms of physical punishment should cease." (NICCY research 2004 page 52)

This priority area and its emphasis on positive parenting in isolation from Government's failure to remove the defence of 'reasonable chastisement' falls far short of the UNCRC Committee's recommendation and Government's obligations under the UNCRC itself.

We strongly advocate that the Government commits in Families Matter to amending the law in relation to physical punishment to ensure that children receive equality of opportunity in relation to their right to the same legal protection from assault as adults. Any implication that positive parenting can redress the balance of the legality of physical punishment is a misunderstanding of the impact that physical punishment has on children. There are very obvious significant adverse implications for children in respect of the continued use of the defence of 'reasonable chastisement' in relation to physical punishment. As this Strategy aims to do nothing to address this very significant adverse impact, there is very clearly a need to carry out a comprehensive and thorough equality impact assessment where there is an obligation to mitigate or propose alternatives to identified adverse impact on equality of opportunity. We firmly support the complete removal of the defence of reasonable chastisement as recommended by the UNCRC Committee as the only way to ensure equality of opportunity in relation to protection from assault. We wish to see this alternative considered in the EQIA carried out with regard to Family Matters and taken forward as a tool for legislative reform.

With reference to priority theme one, we would like to see further information in respect of the evidence and statistics relied upon in forming conclusions. Evidence used has not been referenced and may result in readers doubting the validity of the statistics. Also, with regard to proposed actions, there should be a great deal more information provided in terms of what the Department means by "*providing support*". Similarly, in relation to the delivery of services, further information is necessary to indicate how many services / classes will be delivered, who will deliver and resource them, where they will be available geographically, how they will be available to all parents, regardless of literacy, disability and language barriers etc. in line with the accessibility obligations detailed in section 75 of the Northern Ireland Act 1998.

We welcome the emphasis on family mediation and relationship support within Families Matter. There is insufficient information in the consultation document however which is quite confusing in that there are no firm proposals to do anything in relation to family mediation services. Again, there needs to be targets which are specific, measurable and time bound with a firm commitment of adequate resources to ensure that the commitment given by the Department to build on and expand the services which already exist can be realised through achievable targets which can deliver better, more accessible family mediation services for those families who need it when they need it.

We also wish to comment on the actions associated with 'relationship support' in the draft Strategy. While we agree that there is a need for greater family support through relationship advice and counselling, the action which relates to this service states that the Department will continue to work collaboratively with voluntary and community organisations in supporting families through the provision of relationship advice and counselling. While we welcome the recognition of the wealth of expertise and experience within the voluntary and community sectors, we are concerned that the only commitment made by the Department is to continue to work in collaboration with the voluntary and community sectors. Families Matter is a Government Strategy and we believe that the duty to provide such services also rests with Government. If the Department believes that the correct level of expertise rests with the voluntary and community sectors to deliver these services there should be a firm resource commitment to ensure that such services, which are to be delivered for Government by the voluntary and community sectors, is adequately funded to ensure consistency of service availability and expert staff who are funded to deliver these services with long term contracts.

We are very supportive of the commitment to develop and expand Child Contact Centres in Northern Ireland. However we would emphasise that fundamental to action in this area is the need to ensure the sustainability of existing child contact services. Similarly, there is no way of measuring success within the Strategy. There should be a series of child rights indicators attached to the actions within the Strategy in order to demonstrate measures of success. These indicators must be child rights based to ensure that children are benefiting from the services provided and also that they are having their rights upheld by Government through the operation of this Strategy. We would also be supportive of the inclusion of Article 8 of the European Convention on the Rights of the Child as incorporated by the Human Rights Act 1998 at this section to demonstrate Government's commitment to upholding the rights of the child through Families Matter.

Priority Theme Two – Access to Services and Information

There is a very obvious need for access to services and information, not only for parents, but also for children and young people. It is imperative that the Department is explicit in its arrangements for those who have difficulty understanding the written English language to ensure compliance with section 75 and the relevant international standards. In the case of *T & V v UK*, the European Court of Human Rights has made it quite clear that children must be able to participate in and understand proceedings in which they are involved. This applies to administrative as well as judicial proceedings. The Department needs to ensure that detailed procedures are put in place which enable young people with a mental health and learning disability to fully participate in the provision of any services and to receive information in a way that they fully understand which encourages the accessibility of the system. This is also true of parents who may have literacy or language problems or have a mental health problem or learning disability. There needs to be a much greater emphasis on ensuring that information is accessible to all, particularly the most vulnerable children and parents who have additional needs. In addition, further information is required in relation to the action points with regard to resourcing, staffing and awareness raising as well as inclusion of measures of success which can be measured with a set of child rights indicators. Cognisance should be taken of the services which already exist to provide information and advice to parents and children in Northern Ireland and the Government should build upon the wealth of expertise which has been developed and maintained within the voluntary sector. Services such as the CLC's dedicated free phone advice line for children and young people and the Parents Advice Centre's parents and information and helpline provision should be resourced to provide this information and advice service to vulnerable children and their families given the high level of expertise and experience which already exists within both of these organisations.

Priority Theme Three – Assessment

We welcome the proposed standardised and integrated approach to the holistic assessment of a child and their families needs, which we agree should assist with a more effective, earlier identification of additional needs. Delays in assessments is a huge problem and we support the Department in aiming to make assessments 'readily accessible' to all. We are concerned with regard to the UNOCINI approach however as it is very unclear how it will contribute towards the delivery of the central outcome of the Children's Strategy which looks toward the creation of a society which respects children's rights. Children's rights and their delivery by Government should be central to

any assessment system and we believe UNOCINI must be able to provide an assessment of the extent to which children and families are able to exercise their rights. UNOCINI must be able to highlight where service providers need to take action to support families to be able to help their children realise their rights. It is also vital that children and young people have their views heard and taken into account in the assessment process in line with Article 12 of the UNCRC and section 75 of the Northern Ireland Act 1998.

Priority Theme Four – Information Sharing

CLC is aware that it is important for effective communication and information sharing to take place to ensure joined up service provision for children and their families. We, like the consultation document acknowledges, have some concerns in relation to the unnecessary sharing of information and the possible violation of the child's right to privacy under Article 16 of the UNCRC and Article 8 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998. There is a very clear need for the development unequivocal Guidance and Protocols to assist service providers when making decisions about when it is appropriate to share information and what information should be shared. This Guidance and Protocols should be openly and transparently consulted upon when it is developed in line with the statutory obligations in section 75 of the Northern Ireland Act 1998, including direct consultation with children and their families. We look forward to working with the Department on the development of this Guidance and to responding to all consultation exercises that take place to ensure equality of opportunity and children's rights are central to its development.

Priority Theme Five – Integration and Multi-Agency Working

While we warmly welcome the creation of Children's Centres in Northern Ireland we wish to highlight the confusion which exists in relation to the development and creation of these centres. We would advocate that the Department of Education and the DHSSPS should jointly take lead responsibility for these new centres. It will be essential that the new centres ensure that health and social services are co-ordinated and integrated within this new approach. We would request more detailed information on the timeframe and associated resources for the development of children's centres and would strongly advocate that parents and children, as well as their representatives in the voluntary and community sector are consulted and involved from the outset in the planning and development of these new centres in line with the statutory obligations in section 75 of the Northern Ireland Act 1998.

Conclusion

The Children's Law Centre is grateful to have the opportunity to comment on the DHSSPS's Draft Families Matter Strategy. We hope that our comments have been constructive and useful to the Department and are more than happy to meet with DHSSPS staff to discuss anything in this response. We wish to be kept fully informed of progress in the development of the DHSSPS Families Matter Strategy and look forward to the issues raised and recommendations made in this response being addressed, taken forward by DHSSPS and hearing from DHSSPS in the near future. We also look forward to receiving your response to the questions we have asked in the response and receiving the additional information requested.