



ANNUAL COMPLAINTS AND LEGAL REPORT 2019-2020

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COMMISSIONER'S FOREWORD



*“Where, after all, do universal human rights begin? In **small places**, close to home – so close and so **small** that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works.” Eleanor Roosevelt*

The realisation of the rights of children and young people can only be real when we are confident that they experience them in their everyday lives, and when they do not, that they and their families have avenues by which breaches and violations can be addressed. Hence, the need for every statutory authority to have robust child-friendly complaints processes. Articles 7(2) and (3) of my legislation outlines NICCY’s role to keep under review the adequacy and effectiveness of law, practices and services and so it is with great pride and that I present to you to our Annual Complaints and Legal Report. This outlines the work that NICCY’s Legal and Investigations Team have been doing to discharge this duty.

Education remains the biggest area of work for my Legal team, with Special Educational Needs (SEN) representing nearly half of that work. I find it deeply concerning that these families have to continue to battle to secure their child’s basic right to an education. In March this year we published “Too Little, Too Late, A Rights Based Review of Special Educational Needs Provision in Mainstream Schools” which outlines the experiences of many families and makes 40 recommendations for improvement. This is an example of how NICCY’s casework influences and helps to inform other areas of NICCY’s work. I am confident that once the Review’s recommendations are implemented, it will greatly improve the lives and outcomes for both children and young people with SEN and their families, and will mean many fewer having to resort to making formal complaints to us.

The long overdue implementation of the Special Educational Needs and Disability Act, 2016 and the Addressing Bullying in Schools Act, 2016 should also go some way to securing tangible improvements for children and young people.

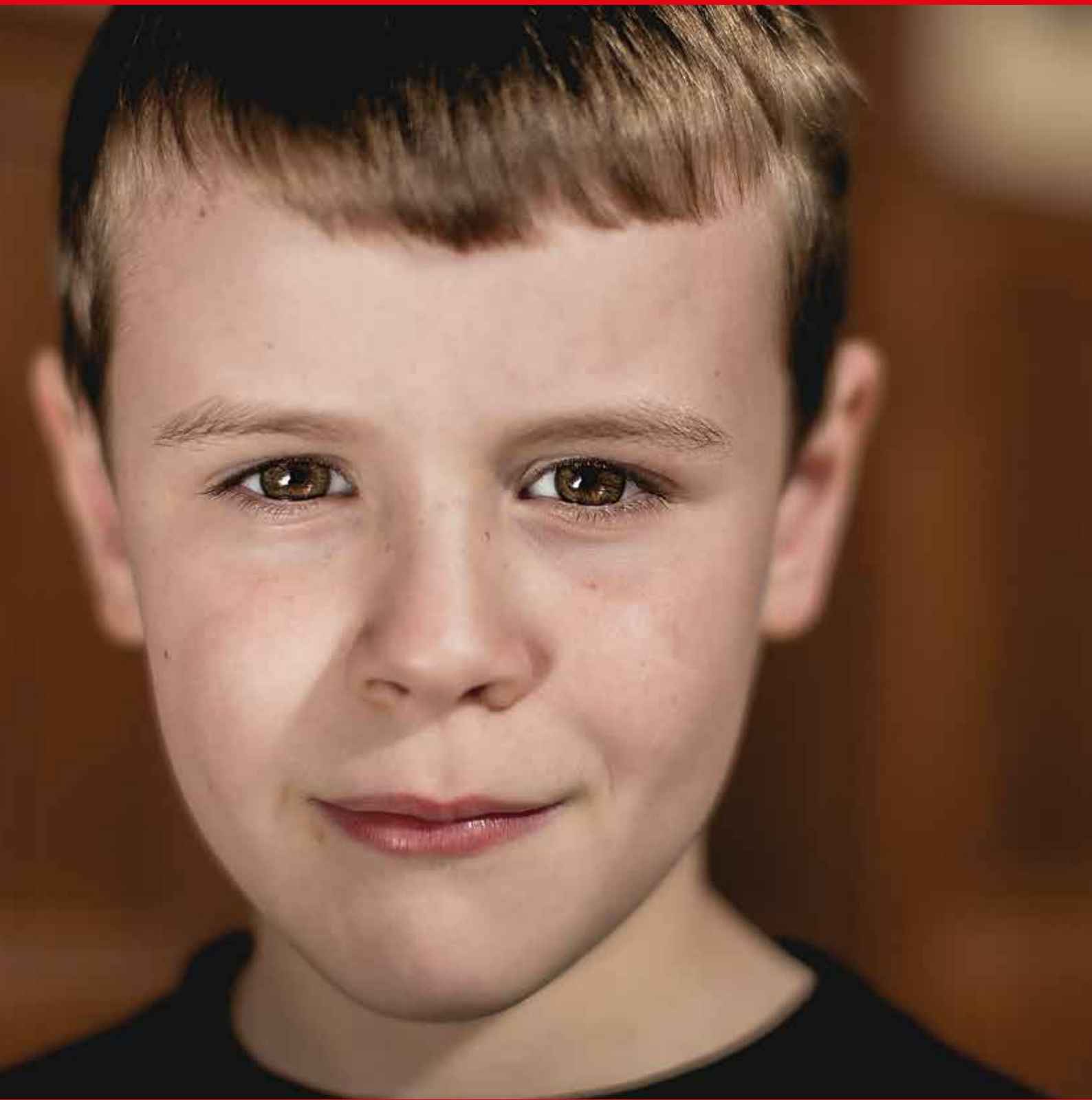
I hope that with the NI Assembly and Executive back this can happen quickly and delivers the real change that is needed.

In this report, you will see the breadth of work that the team undertakes, not only in supporting complaints but also in relation of Public Interest Disclosures, providing financial assistance and intervening in Judicial Reviews. Additionally our first Formal Investigation is progressing. While I am pleased we are working to utilise every aspect of our legislation, the Investigation does however once again highlight some of the limitations of the Commissioner for Children and Young People (NI) Order, 2003. It brings into clear focus the need for a review of NICCY’s legislation. This would not only enable my office to be fully compliant with the requirements of an Independent Human Rights Institution, but also enable us to more fully promote and safeguard the rights of children and young people in Northern Ireland.

The report also outlines the range and breadth of signposting and partnerships that we have developed with statutory authorities and NGOs. It is important that all processes are accessible to children and young people and that children’s rights are embedded in the work, policies and services provided by all relevant authorities.

Finally I want to thank our staff for all their hard work, creativity and diligence during the past year. The evaluations, comments and feedback from clients speaks volumes and demonstrates the team’s continued resolve, compassion and determination to secure the rights for each and every child and young person.

Koulla Yiasouma
Northern Ireland Commissioner
for Children and Young People



INTRODUCTION

Welcome to our Annual Complaints and Legal Report for the 2019-2020 business year. The purpose of this report is to provide detail and understanding of the Complaints Casework Service and Legal Work we carry out. It is important to note that issues and/or trends identified through our legal work 'inform' our policy and research work and contributes to NICCY advice provided to Government.

The Northern Ireland Commissioner for Children and Young People (NICCY) was established in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order 2003' ('the Order') 'to safeguard and promote the rights and best interests of children and young people in Northern Ireland' (Article 6). In carrying out the functions of the Office, paramount consideration must be given to the rights of the child or young person. In so doing, NICCY shall have regard in particular, to the ascertainable wishes and feelings of the child or young person (considered in light of age and understanding) and to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). NICCY shall also have regard to the importance of the role of parents in the upbringing and development of their children.

Furthermore, under the founding legislation, the Commissioner has a statutory duty to keep under review the adequacy and effectiveness of law, practice and services provided by relevant authorities.

Mission

NICCY's Mission is, 'to safeguard and promote the rights and best interests of children and young people'.

Vision

NICCY's Vision is, 'A society where the rights of all Children and Young People are respected and realised.

Our Values

All of NICCY's work is underpinned by our core values which we recently reviewed and updated. We apply these in our day to day work and seek outcomes based on their application and realisation.

1. **Children's and Young People's Rights** are at the centre of all we do.
2. We value and protect our **independence**.
3. We **respect** and value people, promote inclusion and diversity, and challenge discrimination and inequality.
4. We are open and honest and act with **integrity**.
5. We are **optimistic**, striving to effect positive and lasting change.

The Legal and Investigations Team

The Legal and Investigations (L&I) Department is headed up by our Chief Executive, Mairead McCafferty PQH LL.M, now directly responsible for it following the public sector VES (voluntary exit scheme). During the year the L&I Team comprised Mairead and:

- ▶ Fiona Hunter LL.B Senior Legal & Investigations Officer;
- ▶ Colette Donaghy LL.B (previous) Senior Legal & Investigations Officer;
- ▶ Robert Hunter M.Leg.Sci Legal & Investigations Officer;
- ▶ Deborah Crawford LL.M L&I Advice Officer; and
- ▶ Steven Chapman Administration Officer.



STATUTORY DUTIES AND POWERS OF NICCY

NICCY duties and powers, as set out in legislation are summarised below:

Article 7 of the 2003 Order outline the **duties** of the Commissioner which are:

- ▶ To promote an understanding of the rights of children and young persons;
- ▶ To promote an awareness of the importance of those rights and a respect among children and young persons for the rights of others;
- ▶ To promote an awareness of matters relating to the best interests of children and young persons;
- ▶ To keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons;
- ▶ To keep under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities;
- ▶ To advise government and relevant authorities on matters concerning the rights or best interests of children and young persons;
- ▶ To take reasonable steps to ensure that children and young persons and their carers are made aware of the functions of the Commissioner, the location of her office and the ways in which they may communicate with the Commissioner;
- ▶ To take reasonable steps to ensure that children and young persons are encouraged to communicate with the Commissioner;
- ▶ To take reasonable steps to ensure that the content of any matter published by the Commissioner takes account, so far as practicable, of the age, understanding and usual language of any children or young person by whom it is intended that such matter will be read and of the effect of any disabilities they may have;
- ▶ To take reasonable steps to ensure that the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of her functions; and

- ▶ To take reasonable steps to ensure that the services of the Commissioner are, so far as practicable, made available to children and young persons in the locality in which they live.

Articles 8-15 outline the Commissioner's general **powers** which are to:

- ▶ Undertake, commission or provide financial or other assistance for, research or educational activities concerning the rights or best interests of children and young persons or the exercise of her functions;
- ▶ After consultation with such bodies as she thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children or young persons;
- ▶ For the purpose of any of her functions, conduct such investigations as she considers necessary or expedient;
- ▶ Compile information, provide advice and publish any matter concerning the rights and best interests of children and young persons, including the outcome of any research or investigation and any advice provided by the Commissioner;
- ▶ Make representations or recommendations to any body or person about any matter concerning the rights and best interests of children and young persons;
- ▶ Conduct general reviews of advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities;
- ▶ Review advocacy, complaint, inspection and whistle blowing arrangements of relevant authorities in individual cases;
- ▶ Provide assistance with complaints to relevant authorities;
- ▶ Conduct investigations of complaints against relevant authorities; and/or
- ▶ Bring, intervene in or assist in legal proceedings.

NICCY's Statutory Duties

Promote

Awareness and understanding of the rights and best interests of Children & Young People

Awareness of function / location of the Commissioner and how to contact her

Art 7(1) (a) 2003 Order

Monitor & Review

The effectiveness of law and practice

The adequacy and effectiveness of services

Art 7(2) &(3) 2003 Order

Advise & Communicate

Advise government and relevant authorities;

Communicate effectively with children and young persons and their parents

Seek views of Children & Young People

Art 7(4) &(5) 2003 Order

NICCY's Statutory Powers

Undertake Commission Challenge

Research or educational activities concerning the rights or best interests of children and young persons or the exercise of her functions

Conduct investigations as she considers necessary or expedient to meet her duties

Compile info', provide advice and publish any matter (including educational activities, investigations and advice) concerning their rights and best interests

Art 8(1) & (3) & (5)

Issue Guidance Make Representations

In relation to any matter concerning the rights or best interests of children or young persons

Make representations or recommendations to any body or person relating to the rights and best interests of children and young persons

Art 8 (5) & (6)

Address Rights Breaches Advocacy

Assist with complaints to / against relevant authorities

Bring, intervene in, or assist in legal proceedings

Art 11, 12 & 14



LEGAL WORK CATEGORIES

As set out in the previous section, the 2003 Order confers a range of powers upon the Commissioner. These powers are the ‘tools’ which enable the Commissioner to fulfil her duties. In line with the legal functions of the Office, the following from our Corporate Plan 2020-‘23 sets out how NICCY uses these powers to address breaches of children’s and young people’s rights in Northern Ireland.

- ▶ **Complaints Handling** (Casework) to, or against, relevant authorities, in line with the parameters of the legislation – across a range of areas; e.g. at Special Educational Needs and Disability Tribunal (SENDIST) – we have historically received a large number of cases that fall into this category. These will continue to be dealt with and we shall continue, where appropriate, to offer assistance up to, and including, Tribunal representation;
- ▶ **Conducting Independent Investigations** where breaches of the rights of children and young people are alleged, and where internal complaints processes have been exhausted - in line with the requirements of the legislation;
- ▶ **Formal Investigations** into cases / complaints which require formal use of NICCY’s powers including cases which expose systemic failings adversely impacting on Children’s Rights;

- ▶ **Bringing, Intervening in, or Assisting with, Legal Proceedings** in challenging breaches of children’s and young people’s rights through a range of measures; some enquiries we receive will require us to commence or intervene in legal proceedings or assist with legal funding. These sit ‘outside’ complaints casework and will continue to be dealt with in line with legislation;
- ▶ **Holding Government to Account** when they fail to protect children’s rights;
- ▶ **Providing Advice** to ensure the implementation of children’s rights in legislation; and
- ▶ **Processing Protected Disclosures** in line with the ‘Public Interest Disclosure (Prescribed Persons) Order 2014. (Public Interest Disclosure (Northern Ireland) Order 1998 as subsequently amended).

Further details and criteria on each are available on our website or via our Legal and Investigations Staff.

For the purposes of this Report, we are focusing on the Complaints Casework and providing an overview of other legal work.



COMPLAINTS CASEWORK SERVICE

In the 2019/20 business year our Complaints Casework Service Staff:

- ▶ Dealt with 302 new cases;
- ▶ Carried forward 108 cases ongoing from the previous business year;
- ▶ Closed 382 cases; and
- ▶ Exceeded our 90% successful closure rate.

Cases are closed when they are resolved satisfactorily and clients are informed. It is pertinent to note that clients sometimes disengage during a process which is usually due to the matter having been resolved for them, and they no longer require assistance. In these situations, we will always write to the client advising that we assume they no longer require assistance and are closing the case. However, clients are informed that they are free to contact us if they do require further assistance and the case will be re-opened.

Cases are initiated when we receive complainants' online Referral Form, which is on our website (see back cover for these details). We ensure equality of access to our services and can arrange an interpreter if needed. Our policy is to contact clients within 5 days of the case being allocated at our weekly 'complaints allocation and review' (CAR) meetings.

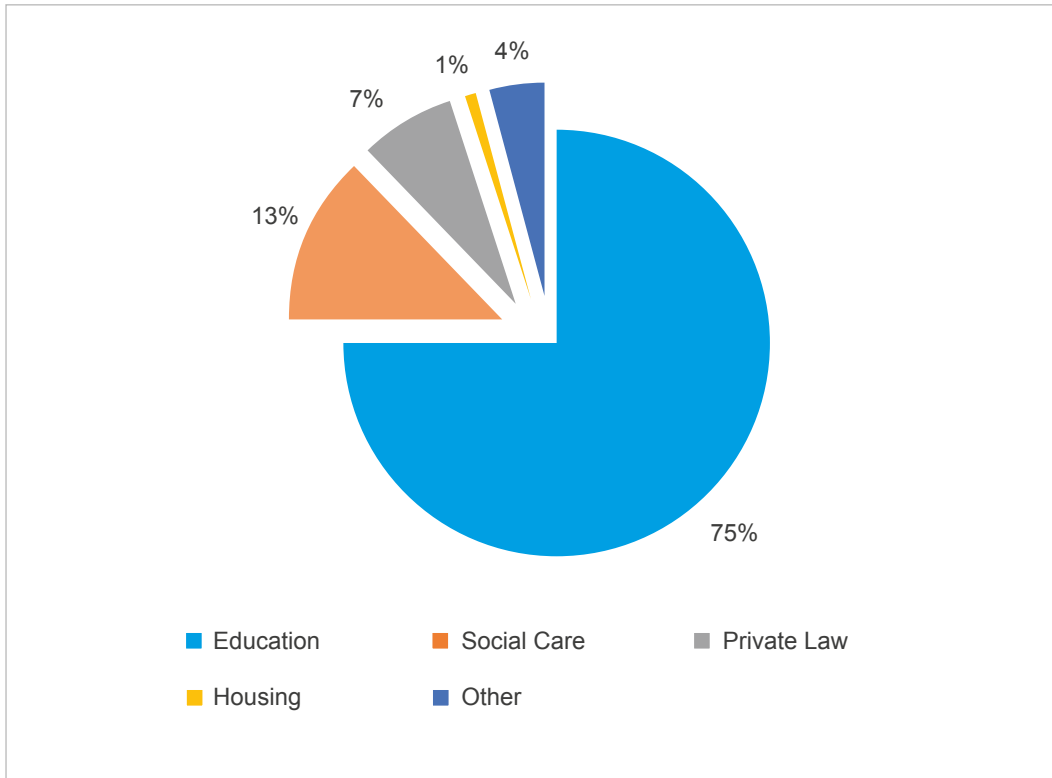
Children and young people are not required to complete the online form and are always given priority access to the team on the same day that they make contact with us.



STATISTICAL OVERVIEW 2019-2020 BUSINESS YEAR

Chart 1

2019-20 Types of Enquiry



In this business year, we dealt with 302 new enquiries and closed 382. Similar to last year, the largest number of enquiries we received were in relation to education. The education queries are broken down in the following pie chart.

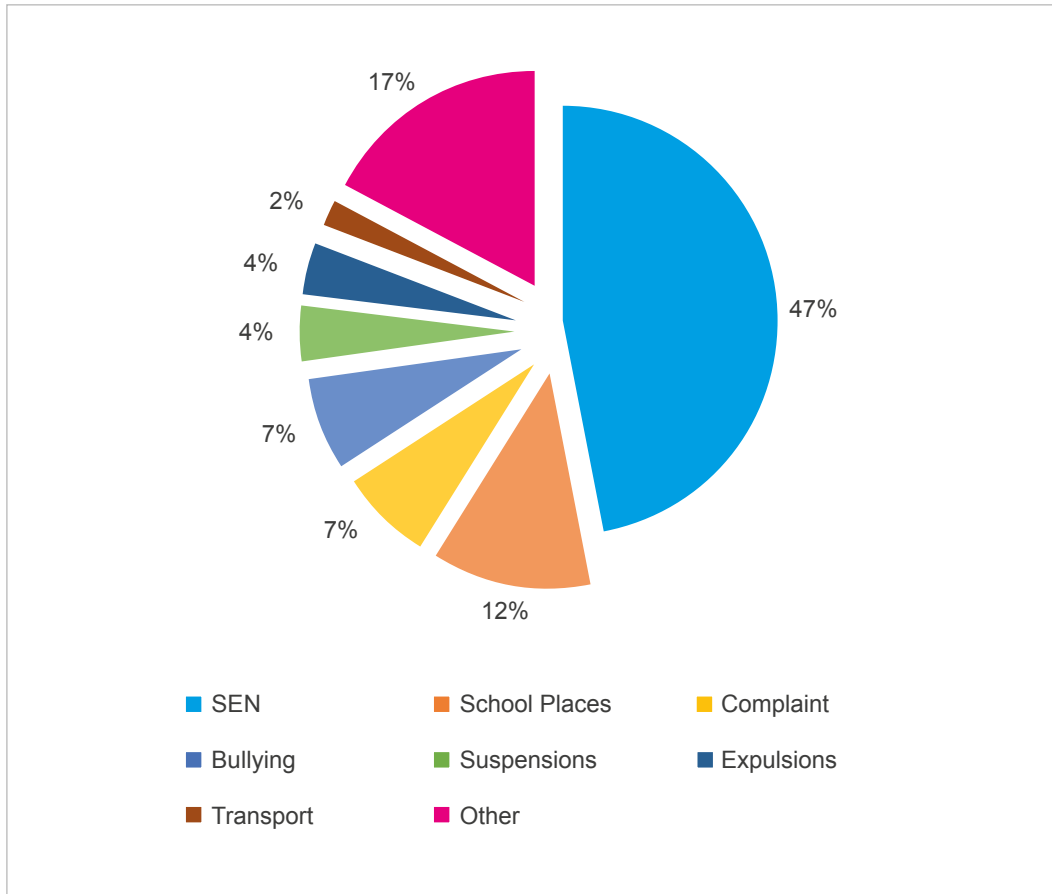
Some of the other areas of enquiry with which we dealt were those in respect of health and social care. These frequently revolved around service provision, but also included complaints about social care employees. We can assist with these complaints and may also refer people to a Trust’s complaints process or to the Patient Client Council who can also assist with such complaints. We also received complaints in relation to housing issues which involve children, transport

issues and welfare benefit related issues. We occasionally received complaints which related to the actions of the Police Service of Northern Ireland; we cannot deal with these due to restrictions in our legislation but will refer clients to the Police Ombudsman - the statutory body set up to deal with such complaints.

We also receive enquires in relation to family / custody / private law matters - 7% in this business year. For the most part, these relate to family law matters, which we are prohibited from acting in, again due to restrictions in our legislation. We have published guidance on our website advising that we cannot deal with such complaints.

Chart 2

Education Enquiries



Range of Education related enquiries

The pie chart above shows the range of issues that we assist with in Education. Special Educational Needs (SEN) is/has been the largest area for complaints. These encompass 47% of all education queries received. Increasingly, parents struggle with navigating the complex SEN process and are unsure of their children’s rights in this area. We can offer assistance such as advocacy liaising with relevant authorities, providing advice and guidance, developing case statements and submitting appeals to the Special Educational Needs and Disability Tribunal (SENDIST) as well as providing representation at the Tribunal hearing itself.

We also had a range of ‘other’ education related enquiries (17%) such as queries on school uniforms, school trips and extra-curricular activities, further and higher education queries, which can also include entry requirements. Specifically this included: GCSE Choices (6), Access to 6th Year (4), Uniform (4), Exam Results (4), Advice (3), Access to the Curriculum (2), School Trips (2), Safeguarding (2), A Level Choices (2), Nursery Places (2), Parental Dispute (2), School Meals (2), Cost of Education (2), Employment Dispute (1), Administration Error (1), Discrimination (1).

School Admission Places

We regularly get enquiries in relation to the allocation of school places. Unfortunately, there are some parents who are disappointed each year when their child is not offered a place at the preschool, primary or post primary school to which they have applied. We can advise parents in relation to the admissions criteria for entrance; assist with meetings of the exceptional circumstances body; and appeals to the Independent Admissions Appeal Tribunal in certain cases.

Bullying

Complaints about the multi-faceted nature of bullying in schools have risen over recent years. We can assist a parent/child making a formal complaint to the school, often writing to / liaising with the school concerned to ensure fair and open processes and adherence to relevant policies. We will ask them to account for their actions / measures they have taken to prevent further bullying, including the implementation of anti-bullying policies. We also advise parents in relation to obtaining appropriate support for their child.

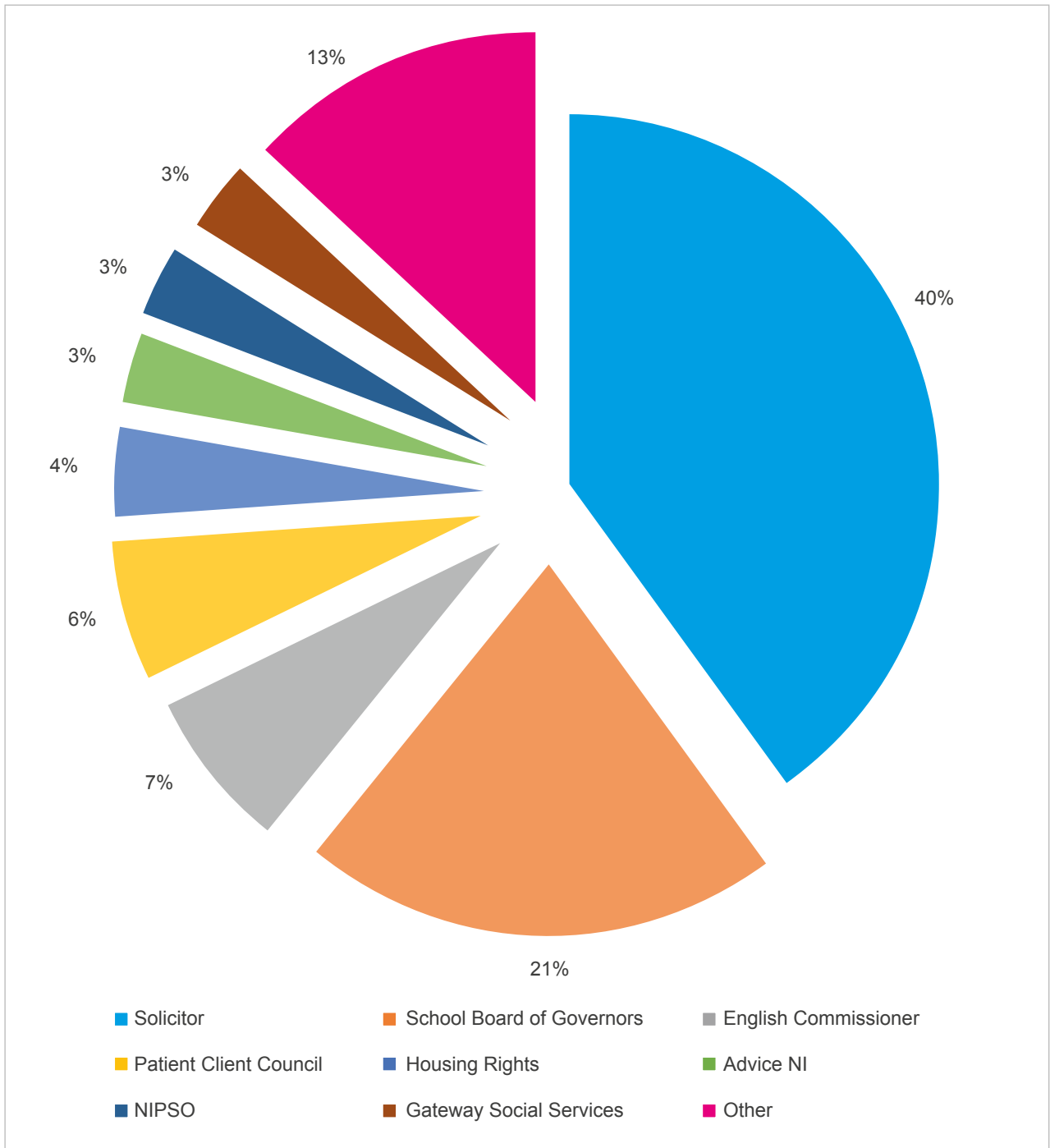
Suspensions and Expulsions

NICCY have produced a 'Suspensions and Expulsions Guide' for parents and carers. We provide advice, guidance and assistance in all areas relating to these matters and have seen an increase in schools disciplining children for behaviours which may be associated with the child's special educational need, rather than focusing on addressing and meeting those needs. In cases like these, parents are informed by us of their children's rights and we will assist with having any needs assessed, to ensure that their child still receives their education without further sanctions.

We provide representation for parents at expulsion tribunals and in this business year, we have had two expulsions overturned, with the children being permitted to return to their school immediately.

Chart 3

Signposting



We continue to signpost to relevant external agencies as/when appropriate (see above chart). We will for example signpost to private solicitors - though we do not recommend specific solicitors – if/when we receive queries from parents who are involved in family law related proceedings. NICCY’s legislation

prevents us from assisting in these matters and so we are required to signpost clients. On occasion, we have also signposted for example to the Patient Client Council, who can assist with complaints against Health and Social Care Trusts or refer clients with queries about social security matters to Advice NI.



COMPLAINTS: SAMPLE CASES

The following gives an indication of the types of complaints our L&I department has received in the past year. As always we seek to ensure 'resolution before litigation' i.e. successfully addressing the matter avoiding the need for recourse to legal / court action as this is invariably in the best interests of the children and young people involved.

1. Special Educational Needs (SEN)

NICCY's legal team was contacted by the mother of a four year old girl with autism. The child had been allocated only 15 hours a week of classroom assistance on her 'Statement of Special Educational Needs' (which had been issued to her by the Education Authority EA), meaning she could only attend school for half days each week as she was without the support she needed. The school had requested additional hours stating they could not meet the student's needs with only 15 hours assistance, however, EA denied the request. One of our L&I Officers filed an appeal and submitted a Case Statement to SENDIST. The EA conceded on appeal and amended the 'Statement' to include 25 hours of one to one assistance. This allowed the child to return to school full time.

2. SEN and Mental Health

We were contacted by the mother of a nine year old boy with Asperger's Syndrome. The young person was suffering from anxiety and suicide ideation caused in part by delay in receiving appropriate SEN services. The EA denied the mother's request to conduct a statutory assessment of her son's needs (with a view to subsequently providing for those needs in a Statement of Special Educational Needs). We filed an appeal on behalf of the young person and the Education Authority agreed to carry out the necessary Statutory Assessment process.

3. SEN and Ill Health

The legal team were contacted by a community organisation in the case of a nine year old girl who was diagnosed with a rare, and potentially contagious, condition. After learning of the diagnosis, the school withdrew their offer of a place. The girl had not been in school since arriving in Northern Ireland two months earlier. Our L&I Staff member liaised with the school and the EA, and were able to resolve the issue allowing the young person to start school with proper precautions in place.

4. Potential Disability Discrimination

The mother of a nine year old boy with SEN contacted our L&I Team as the School had told the mother her son would not be permitted to attend a school trip to England because the Board of Governors determined that according to their risk assessment, he was too high of a risk. The child had previously gone on a local overnight trip with the school without issue, and the school had previously stated that if the local trip went well, the child would be allowed on the England trip. The Board of Governors disregarded the successful experience of the previous trip. We were able to support the mother with advice in relation to the relevant legislation and challenged the decision; the school then allowed the child to go on the trip.

5. Expulsion

We were contacted by a parent whose child had been expelled from school in the middle of their year 11. NICCY obtained the files and prepared the case representing the child at the Expulsions Tribunal. The appeal was upheld and the child returned to school to finish their GCSE examinations.

6. a) SEN and Transport I

We were contacted by the mother of a ten year old boy who has ASD and Pathological Demand Avoidance Syndrome. The young person had withdrawn from school and was recommended to attend a special school. After evaluating the young person's needs, a Case Statement was provided and a partial school day was recommended. This arrangement presented transportation difficulties, as the young person needed transportation outside normal school times. NICCY's L&I Officer was able to advocate for the young person and ensure that transport to the new school was provided by the EA, despite being outside normal school times, without a financial burden being placed on the family.

b) SEN and Transport II

This client's son attended a mainstream school for 2 days and speech and language placement for 3 days a week. When his Statement was reviewed, it was identified that the child was not making the progress expected and that he therefore required a more specialised placement. This placement was some distance from the client's home and the journey would have taken one hour each way by taxi. The client's son had previously had an upsetting experience (not detailed to us) in a taxi provided by the EA and had residual anxieties around this. We supported and advised the parent thereby ensuring that an escort be appointed who would travel with the child to and from the necessary placement each day.

7. Provision of medical support in schools

We were contacted by the parent of a young girl who had complex medical needs. Feeding of a 'blended diet' had to be carried out via a peg/tube. She was due to commence Primary School in September 2020 and the school advised they could only feed her formula during the day as there was no clear guidance from the relevant Trust as to how to feed the child a blended diet in this way. NICCY engaged with the school, and also the Lead Nurse within the client's Trust area to address this. The Lead Nurse raised the issue with the Assistant Director of Nursing Governance to resolve the situation. A further outcome was that a 'professional task and finish group' is now to be set-up in Northern Ireland to address this issue for both children and for adults.

8. Bullying in Schools

The L&I Team were contacted by a parent whose daughter was being subjected to bullying by her classmates in and outside school. The parents' attempts to have the school deal with this had proven unsuccessful. NICCY contacted the school and asked that they account to us in relation to what measures they had taken to address the bullying. We obtained a copy of the schools anti-bullying policy and successfully challenged the school, as they were not adhering to their own policies. We ensured that the school adhere to their own policies and robustly implement them immediately to ensure the safety and wellbeing of our client's daughter.

9. School Progression

A parent contacted NICCY because she felt that her daughter needed to repeat a year in school. Her daughter was the youngest child in her year group with a birthday at the end of June. She had struggled in school and her Mum felt that she would continue to struggle, as she was so much younger than some of her peers.

Our L&I Officer supported the mother referencing the Education Authority's guidance on the process to place a child outside their statutory year group is made. The child's Mum then had a meeting with the Principal of the school and the 'guidance points' provided by our L&I Officer were highlighted. The school subsequently agreed for her daughter to be "held back" a year.

10. SEN: Significant delays in 'Statementing process'

NICCY's L&I Officer was contacted as a client's daughter had required a high level of support to cope in her nursery, so the mother had made a parental request for a statutory assessment, this was accepted in March 2019. The client contacted us as she was frustrated with the Education Authority and was concerned that there was undue delay in all aspects of the process. We contacted the EA's Statementing Officer and reiterated the statutory timelines and the need to adhere to these, requesting that the EA expedite the process from here on, thereby ensuring the child had a 'Statement' in place in when beginning school.

11. Use of Seclusion in Schools

NICCY's L&I Team were contacted by this mother as she was very concerned that her son had been isolated in school, and on one occasion, was locked in a room and when she went to the school, no one knew where he was. The parent was understandably concerned that had there been a fire, or her son had been ill, no one would have known where he was to take him to safety or look after his wellbeing. This was patently not acceptable and the client was supported and assisted in making a complaint to the school to have the matter addressed to ensure no such repetition.

12. Payment for School Activities

NICCY was contacted by a parent who had three children at the same school. She queried whether the school were entitled to charge parents for activities deemed to be part of the curriculum. The parent had been contacted by the school to advise her that payment was overdue and she should contact the school to make payment as soon as possible. We advised the parent that in terms of voluntary contributions, Boards of Governors are permitted to seek voluntary contributions from parents for the benefit of the school or in support of activities organised by the school whether inside or outside school hours. However, the law requires that any such request must make it clear that:

- a) There is no obligation on parents to make a voluntary contribution; and
- b) No pupil, whose parents have not paid the contribution, can be treated differently to other pupils.

Pupils and their parents should not be asked why they have not paid voluntary contributions. In addition, schools should be mindful of the spirit as well as the letter of the law and should ensure that:

- a) The voluntary nature of contributions is highlighted in all correspondence that requests them; and
- b) The design of stationery used for billing or invoicing clearly distinguishes between any compulsory charges being levied and any voluntary component.'

Provided with this information, the parents were then able to work with the school to satisfactorily resolve the financial burden on the parent.



EVALUATION REPORT 2019-2020

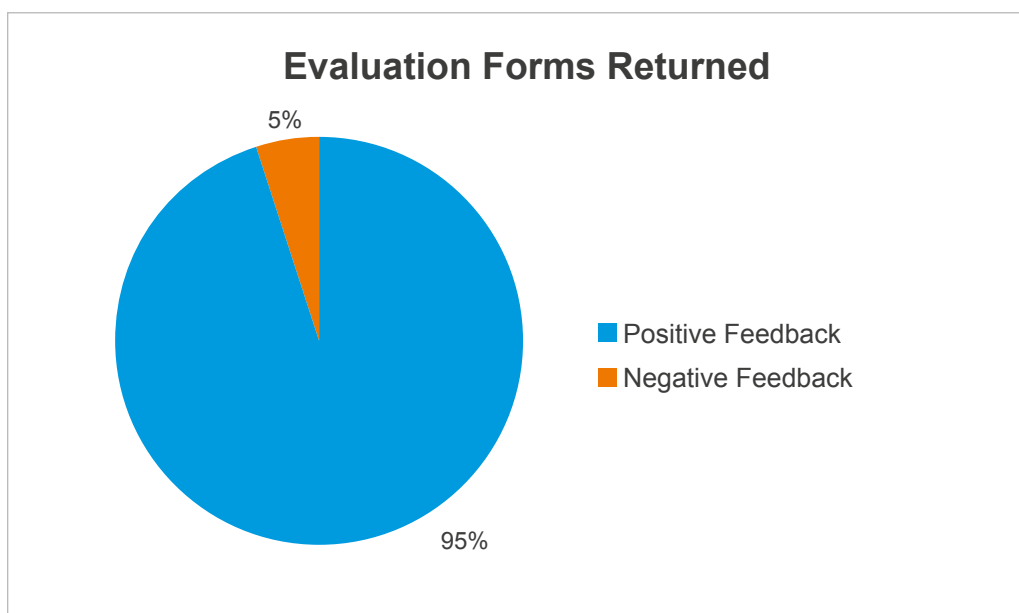
The L&I team continually strive to improve services and we welcome any feedback, positive or negative. When we close an enquiry, we send each client an evaluation form for completion. On occasion, we send the client a paper copy, e.g. in cases where the client does not have access to the internet or an email address.

Evaluation is gathered anonymously to allow the clients to be open and honest in their assessment of our service.

Since moving to an email based evaluation system, we have seen an increase in the completion rate year on year - from 14 returns in 2016/17, 29 in 2017/18, 38 in 2019/20 and to 40 in the previous business year 2019/20.

We are very pleased that most of the comments are positive and complimentary of the team or member of staff who worked on their case. If a client is not satisfied, and submits a negative evaluation form, we will, when they give permission, contact them and discuss how the matter could have been resolved to their satisfaction. We take on board all comments to contribute to our staff development and learning.

Of the 40 evaluation forms returned in 2019/20, 38 contained positive feedback and 2 contained negative feedback.



A selection of comments from evaluation forms, have been extracted below:

“The help we received from yourselves was exceptional all went above and beyond without the help received we wouldn’t be in position we are today. We will be forever grateful for their help.”

“The service was lovely, very approachable staff from the first contact through to the legal officer that helped me.”

“Responded very quickly and offered immediate support and representation.”

Staff were also singled out for individual praise:

“X was absolutely amazing, she made what was a very stressful and confusing process so much easier for me. I can’t thank her enough.”

“X was lovely and very helpful. She is very knowledgeable.”

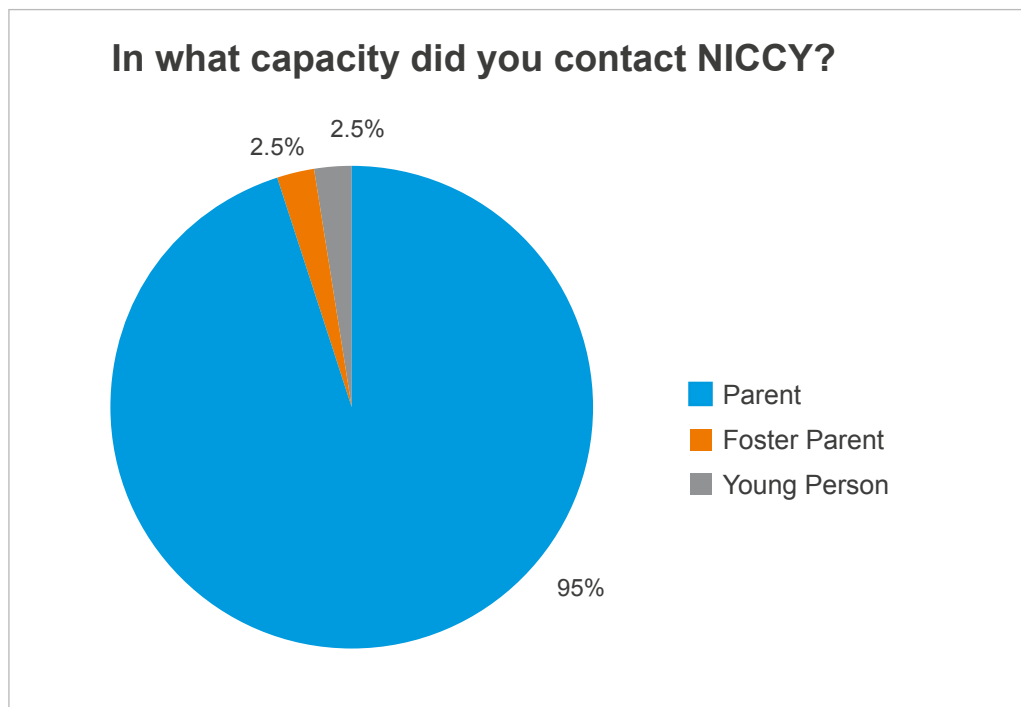
Feedback of any kind is always welcome but it is always welcome to receive such praise for the hard work of the department. The positive comments reflect the experience that the vast majority of our clients have when they engage with our service.

The two negative feedback forms should be viewed in light of the restrictions placed upon us by our remit and also by clients having unrealistic expectations of what we in the L&I department can do to assist them. In each case, where we can identify the client who has submitted negative feedback, we contact them to clarify our role and remit, to explain our course of action and to answer any remaining questions they have. Those whom we cannot assist, generally accept this.

The first negative form was submitted by a parent that was involved in Family Court proceedings. NICCY is unable to assist in matters that are before the Court due to our remit and this was explained to the parent. They were signposted back to their solicitor. The second negative form unfortunately contained too little information to identify the client and contained no information explaining why they were unhappy with our service.

Looking at the questions asked on the evaluation form, allows us to glean useful information and data from those who contact us.

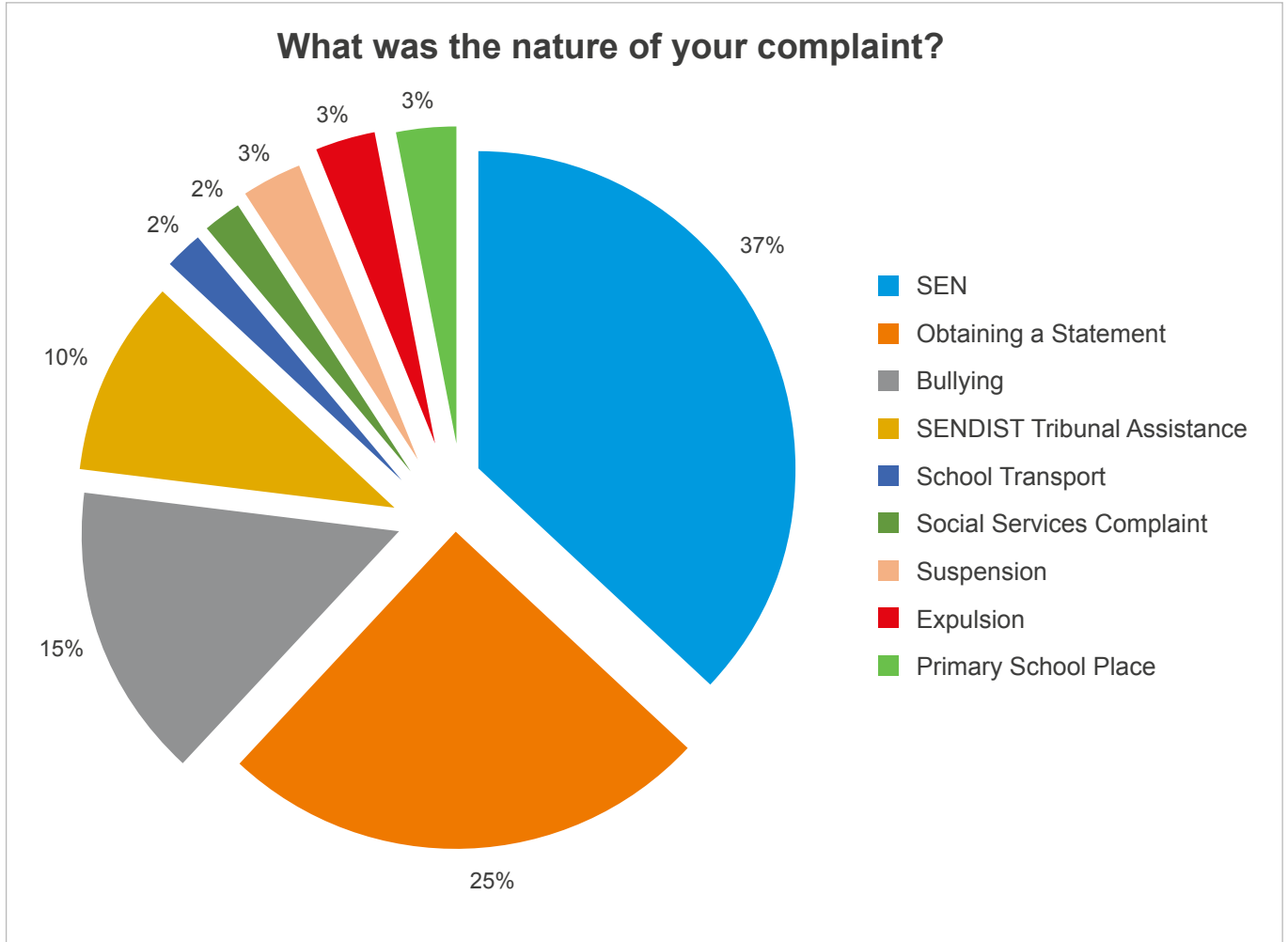
Question 1 Analysis



38 of the 40 forms that were returned to us were completed by parents. The vast majority of enquiries we receive are from the parent of a young person so this was to be expected. The other forms were returned by a foster parent and a young person.

Question 2 Analysis

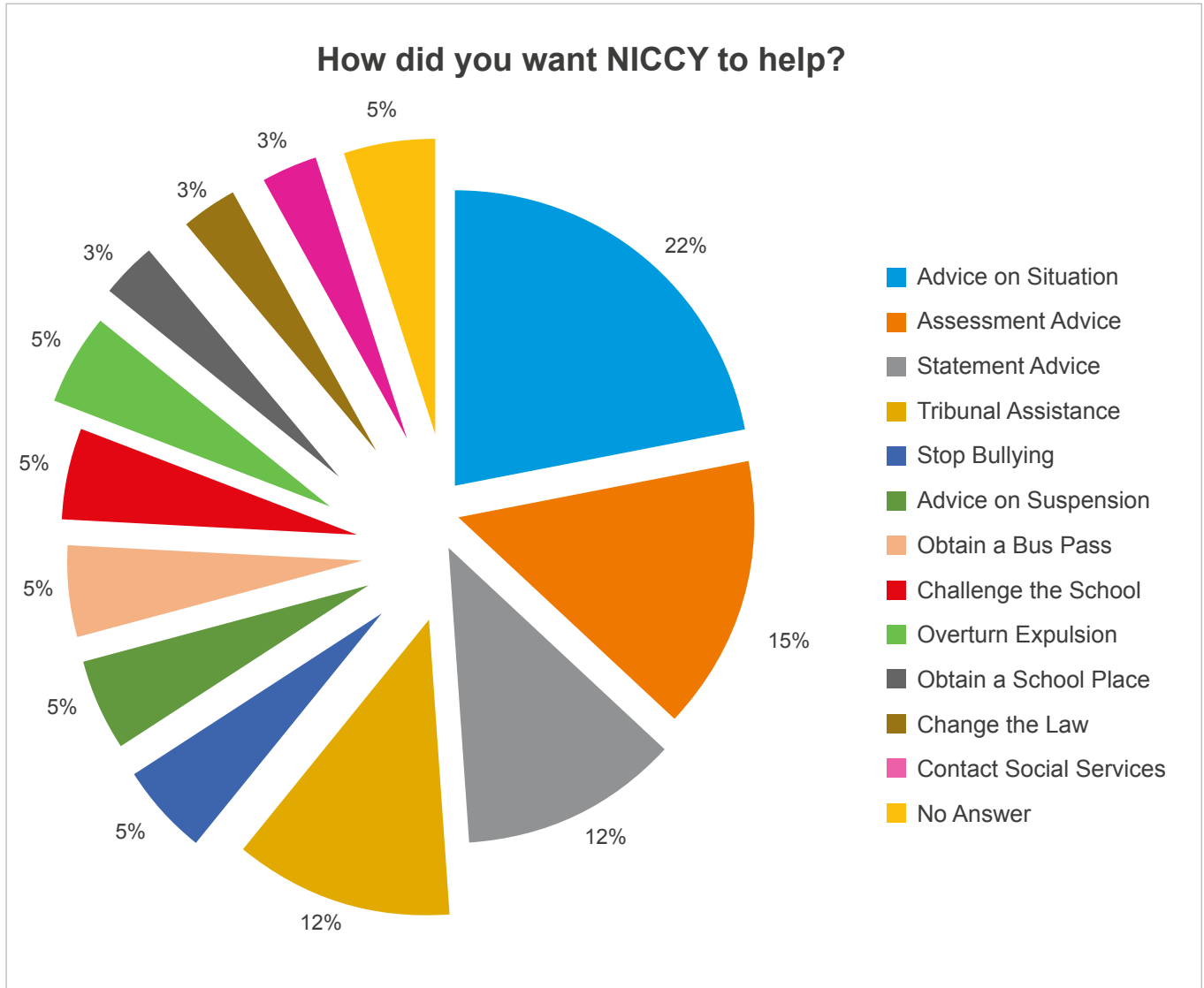
Question 2 establishes the reason for contacting NICCY.



As is illustrated by the Pie Chart above, the majority of issues on which we received feedback related to school and education. The majority of our work focuses on education related issues such as SEN, access to services and bullying. We continue to see an increase in clients with issues around obtaining a Statement of Special Educational Needs in a timely manner, the content of the Statement and clients who are taking matters further i.e. to SENDIST.

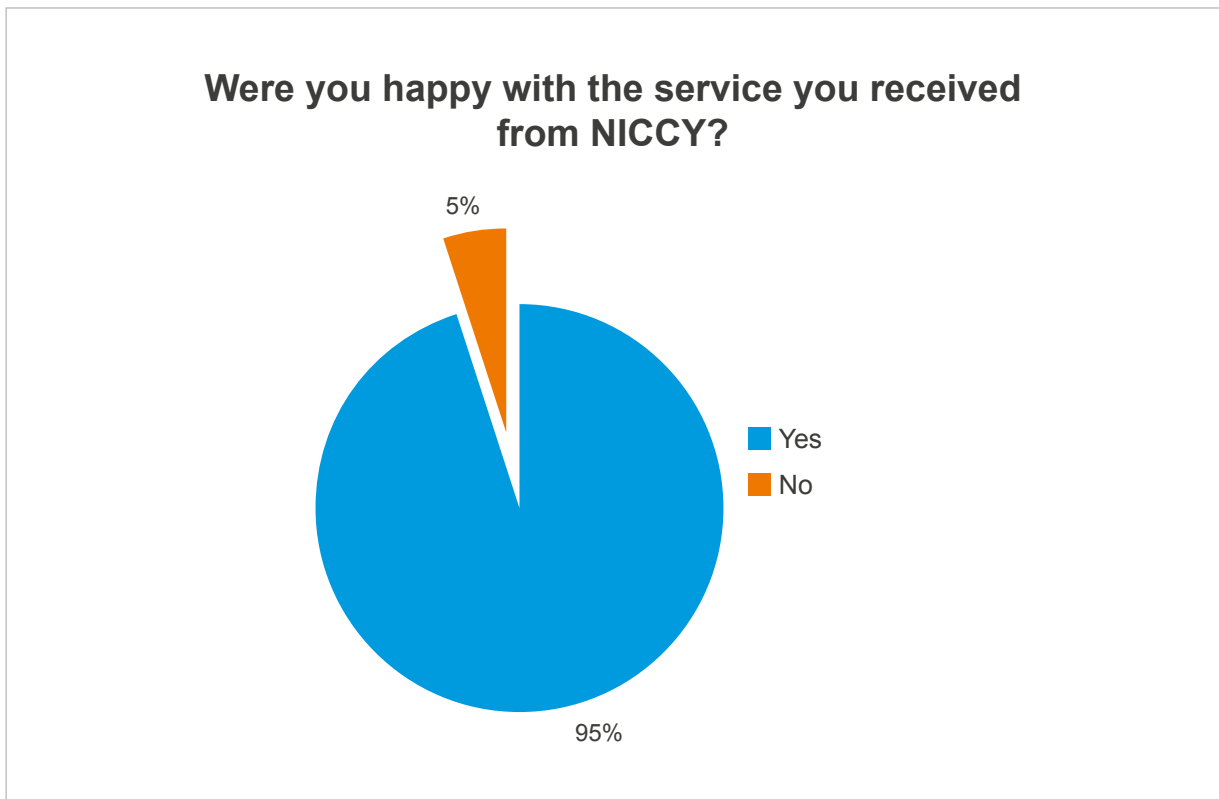
Question 3 Analysis

This question establishes how the client wanted NICCY to help when they contacted us.



The purpose of this question is to allow us to understand what the client expected from our service. The majority of clients contact us with realistic requests and expectations which we can and do meet.

Question 4 Analysis



This question is our best indication of whether the client was satisfied with the service provided. As expected and discussed above, of those who responded, 38 clients were happy and 2 were unhappy with the service.

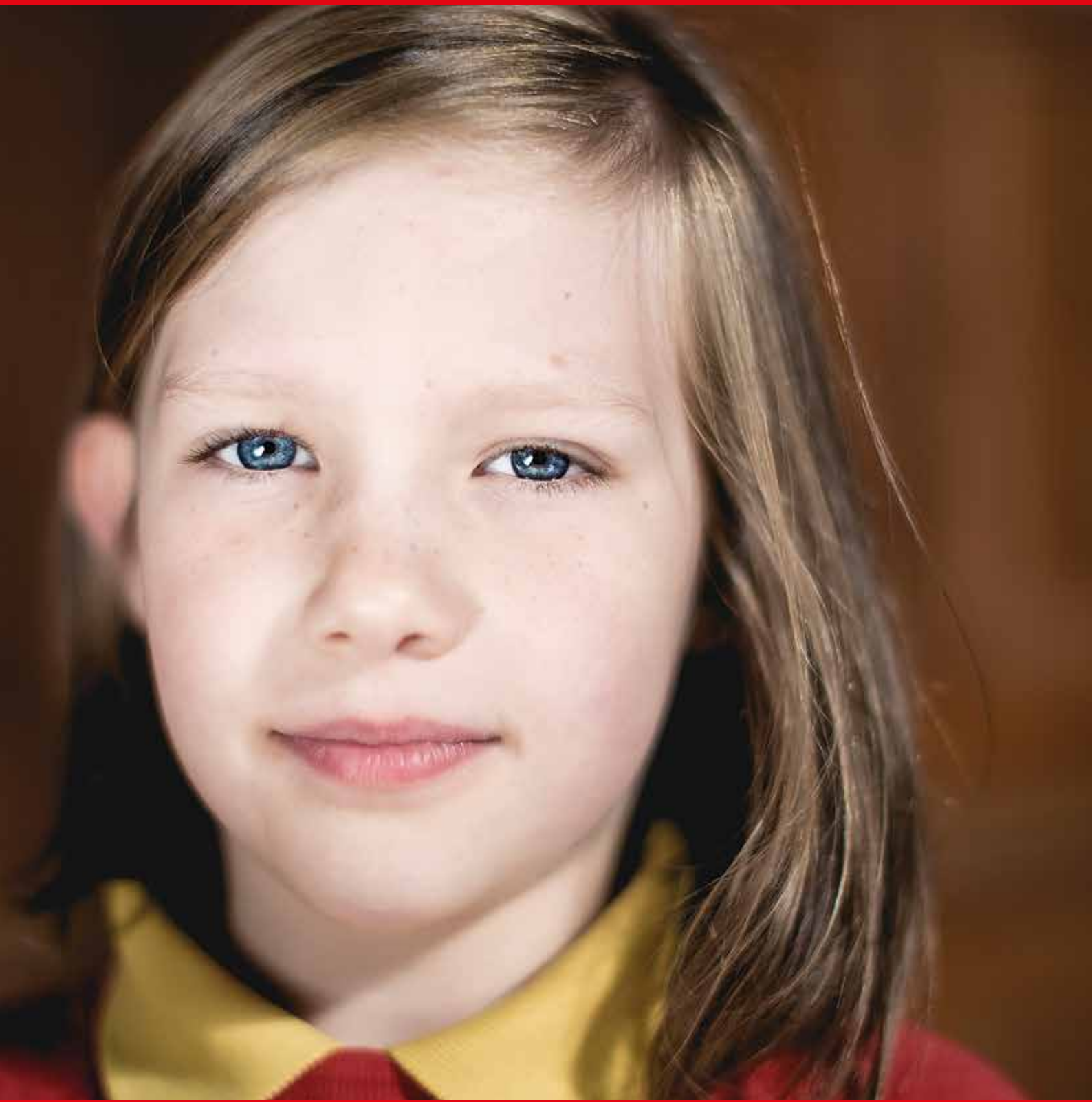
The remainder of the form relates to comments from respondents, some of which have been quoted above.

Summary

As stated earlier, we continue to see a yearly increase in the evaluation form return rate. 2018/19 saw an increase of 24% over the previous business year (2017/18) and an increase of 90% over the year before that (2016/17). During the last business year, there was a further increase (albeit smaller) in the number of forms received.

We will continue to gather evaluation by email as it is beginning to work well and will only send a paper copy in limited circumstances i.e. a client with no internet access or no access to an email address. We will also continue to look for ways to increase the return rate again this year.

In 2019/20 we received 92% positive and 8% negative evaluation forms. As in previous years, 100% of the forms we received back where cases were within remit, were pleased with our service.



LEGAL PROCEEDINGS SUMMARY

NICCY have become increasingly active in legal proceedings outside our complaints casework service. This year we have intervened in several judicial review cases regarding delayed discharge of young people from secure health facilities. This has been at the request / with the consent of the families involved, who were keen for input and advocacy from NICCY as well as the 'weight of the Office' in court proceedings.

The interventions concerned young people with significant learning / mental health difficulties. Unfortunately there was and continues to be, considerable delays in discharges and transition planning by the relevant authorities in formulating long-term, patient driven, care packages outside the secure facilities for the young people involved. These delays had and continue to have, an adverse impact upon the emotional and mental well-being of the young people, as well as causing significant stress to their families.

Some of the issues involved include:

- ▶ Lack of suitable residential accommodation for detained young people in the first instance;
- ▶ Insufficient clarity, including between public authorities, as to which statutory agencies were responsible for particular aspects of care and planning;
- ▶ Very lengthy delays in the initiation, progress, and completion of care planning;
- ▶ Proposals by relevant authorities of care arrangements which were not feasible or suitable for the intended recipient; and
- ▶ Unclear communication between public bodies and families, leaving parents unsure of basic aspects of procedure in the diagnosis, care, and treatment of their children.

Participation by NICCY in these matters has been in support of stakeholders and has provided further reassurance to the families involved of a specific 'child rights approach'. These cases remain ongoing before the courts, and the contribution of NICCY to them to date has helped focus attention on the need for child centred strategies, policies and approaches.

During the year under report, we also supported cases involving the use of restraint and isolation including providing **financial assistance** for cases to be taken forward (for obvious reasons we do not disclose case details here). NICCY has a very small budget it can make available following due process via our Legal Funding Committee to support cases if they meet the relevant criteria.

We also jointly commissioned an external QC's **expert opinion** on the Mental Capacity Act with the Office of the Children's Commissioner in England (OCCE). In September 2019 the Supreme Court ruled in the case of Re D [2019] UKSC 42, which considered the capacity of parents to consent to deprivation of liberty in relation to young people on mental health grounds. The decision raised issues for consideration regarding young people under 16 years of age. We sought clarity on:

- ▶ The legislation applicable in Northern Ireland;
- ▶ Parental capacity to deprive a child of their liberty;
- ▶ Potential legislative protections for children under age of 16;
- ▶ Current mental capacity legislation' compliance with the European Convention on Human Rights; and
- ▶ Whether local authorities have different 'parental responsibility / authority' than natural parents regarding deprivation of liberty.

NICCY has subsequently submitted further **formal advice** to the Department of Health in NI and you can read this here – www.niccy.org/publications/2019/february/22/mental-capacity-act.

NICCY is continuing with work on its first **Formal Investigation** using our statutory powers - similar to those of the High Court. This is a complex and lengthy process, however we are keen to ensure the appropriate outcomes and learning ensuing from the final report recommendations by NICCY. We are also keen to ensure a robust process in completing this work. Under the 2003 Order, NICCY is obliged to keep a register of these recommendations to monitor their implementation by relevant authorities and this will be our focus on completion of the Investigation Report.



PROTECTED DISCLOSURES

NICCY is, under the 'Public Interests Disclosure (NI) Order 1998' (and subsequent amendments up to 2014) a 'prescribed person' to whom 'protected disclosures' can be brought by external employees relating to the safeguarding and promotion of the rights and best interests of children and young people in NI. Where individuals raise a genuine concern, this will be treated seriously and investigated accordingly by NICCY, in line with our statutory powers.

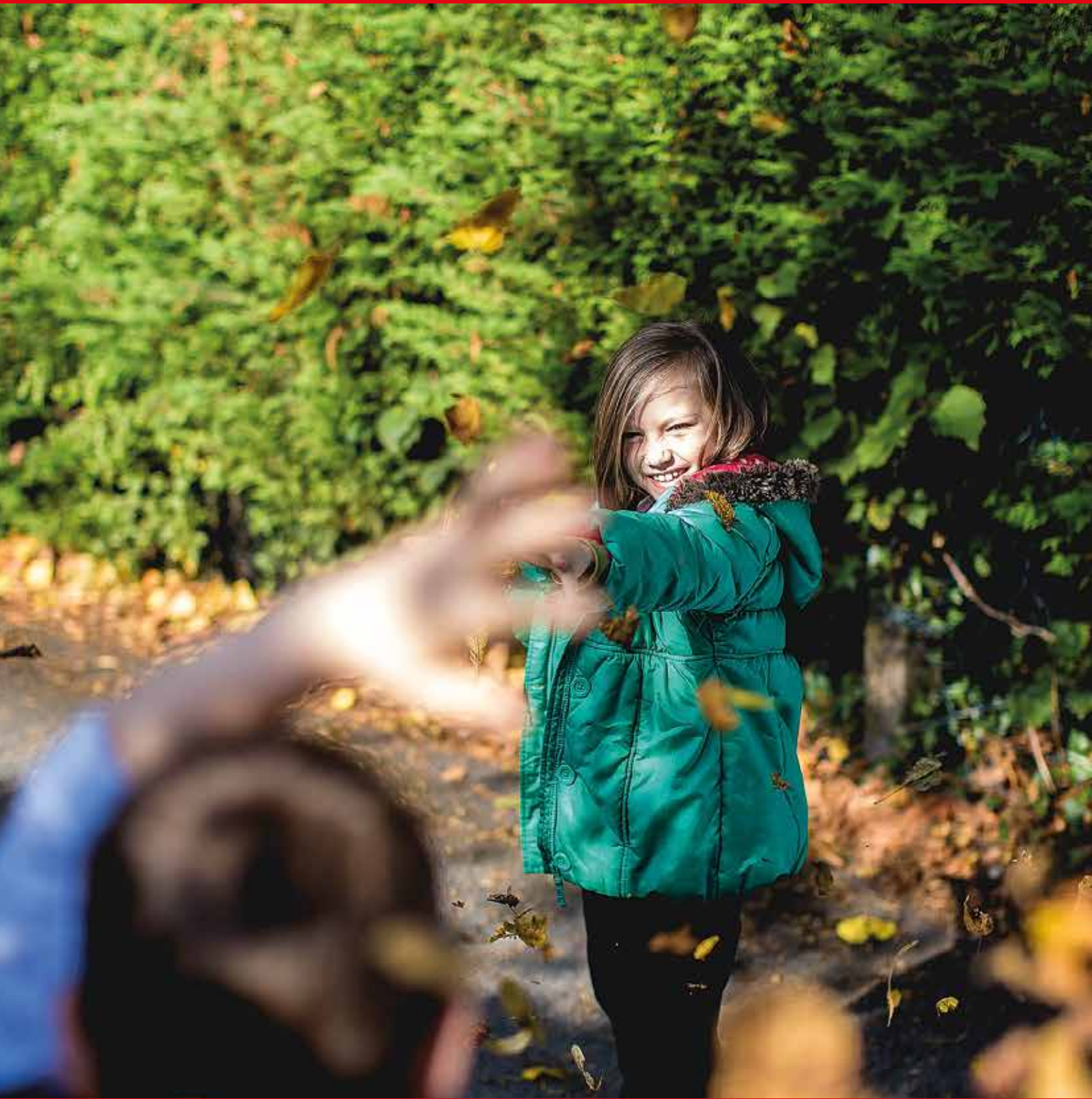
To date we have dealt with 10 'protected disclosure cases', having investigated a further 4 cases in the 2019-20 business year. These ranged from concerns around treatment of children in a care home and school for children with special educational needs.

Following investigation, we received necessary and required assurances from the relevant authorities involved that:

- ▶ Appropriate actions were taken;
- ▶ Measures put in place to ensure non repetition; and
- ▶ Ongoing / periodic monitoring is now in place.

On closure, the 'originators' of the Complaints were all contacted and informed of the positive outcomes.

NICCY is obliged to report annually to our Sponsor Department on such disclosures received.



LOOKING FORWARD AND NEXT STEPS

NICCY seeks to ensure continuous improvement in delivery of our legal services and functions. We review the operation and delivery of our Complaints Casework and other services and welcome feedback on this. It has been a growing trend that complaints/queries/issues brought to us each year have been increasing not just in numbers, but also in complexity. We aim to ensure that our clients continue to receive timely, effective and professional advice, support and satisfactory resolution.

As you will have seen throughout this report, our legal and investigations services have been growing and expanding due to demand and to our stated intention to enhance and facilitate the need for these across the range of NICCY's legal functions. While this report focuses on our complaints casework, we have also provided an overview of the other work of the team e.g. our first formal investigation, legal proceedings (interventions) in court cases, representation at tribunals, advocacy, legal funding assistance and commissioning of legal opinions to inform NICCY's advice to Government, in collaboration with our Policy and Research colleagues. It has been necessary in meeting this growing demand and as part of our 'next steps' to increase the size of our Legal & Investigations Team and we look forward to welcoming additional staff in the next business year.

It is our aim to ensure that the children and young people at the centre of these cases have their rights respected and matters effectively resolved. By bringing about positive change in addressing breaches of children's rights - including through access to appropriate and effective services and practice on the part of responsible relevant authorities - this will benefit children both individually and collectively. We believe such a strategic approach to our L&I work will assist greater numbers of children and young people in Northern Ireland and remain committed to continuing to do so in keeping with the legislative duties and powers of the Office.



Mairéad McCafferty PQH LLM
Chief Executive





You can contact the Northern Ireland Commissioner for Children and Young People using the following details:

**Northern Ireland
Commissioner
for Children and
Young People**

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

T: 028 9031 1616
E: legalteam@niccy.org
W: www.niccy.org
Facebook: [www.facebook.com/
nichildrenscommissioner](https://www.facebook.com/nichildrenscommissioner)
Instagram: [niccy_yp](https://www.instagram.com/niccy_yp)
Twitter: [@NICildCom](https://twitter.com/NICildCom)



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