

ANNUAL COMPLAINTS AND LEGAL REPORT 2021-2022

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COMMISSIONER'S FOREWORD



The United Nations Convention on the Rights of the Child is a remarkable document as it provides the minimum standards for the design and delivery of laws, policies and services for our children and families.

Northern Ireland still has some way to go before it is fully compliant with the requirements of the UNCRC, nevertheless we do have services that the law and regulations demand should meet a particular standard. It is not unreasonable for children and their parents/carers to expect that these standards are met and when they are not, redress or complaint procedures should be easily accessible. This is the reason that NICCY's Legal and Investigations Department exists and is a crucial aspect of our work.

This report provides an overview of the 386 individual cases that the team has worked on over the year. As you will see the impact of the pandemic continues to be felt by children and young people, hence a rise in complaints regarding alternative arrangements, particularly in education, on issues such as post-primary transfer and examinations. We saw an increasing number of complaints directly from young people themselves, mainly concerning arrangements for GCSE and A-Level results.

The work this year has been a reminder that we can never predict the issues presented and the team have continued to be flexible, with the work being driven by the young people and their families. An example of this has been the work on access to and monitoring of toilets in schools which was also raised by young people.

We have also been faced with diverse attitudes towards measures to protect children from the effects of the pandemic, such as being asked to challenge the use of facemasks in schools or oppose vaccinations whilst others demanded that we supported these measures. I and the NICCY team were grateful for the engagement with the Chief Medical Officer and his team as well as colleague commissioners across Europe and the advice issued by organisations such as WHO, which informed the positions we took on such "contentious" issues. We were in unfamiliar territory, but I believe that the positions that we adopted were based on objective information and in the best interests of children in Northern Ireland.

NICCY's Legal and Investigations team also worked on Judicial Review interventions and Tribunals, as well on Public Interest Disclosures. The Judicial Reviews have been significant as they have demonstrated how different sectors can work together to secure real change for the most vulnerable children. Such strategic litigation is a legitimate and critical tool to securing change and there is potential to achieve more in this area. It is my hope that this serves as a reminder of need for the long overdue review of the Commissioner for Children and Young People (NI) Order, 2003.

The Formal Investigation has continued and is coming to a conclusion. I am confident that it will be an authoritative report which I believe will have a significant impact on policies and services for children with complex needs.

The Westminster Government has announced its intention to alter the protection of human rights as enshrined in the Human Rights Act and European Convention of Human Rights. This would be a retrograde step as both provide a benchmark to and more importantly a legally binding framework to protect our most vulnerable children and young people. NICCY will continue using the evidence of our Legal and Investigations department to oppose these changes.

NICCY's Legal and Investigations team continue to work with professionalism and commitment to the children we serve. As the evaluations of their work have demonstrated, they have maintained a high quality and responsive service during the pandemic and I am grateful for all their hard work.

Koulla Yiasouma
Northern Ireland Commissioner
for Children and Young People



INTRODUCTION



Welcome to our Annual Complaints and Legal Report for the 2021-2022 business year, which sets out the work and functions of NICCY's Legal & Investigations (L&I) Department.

This year we dealt with almost 400 complaints - ranging from special educational needs and disability matters to access to healthcare treatments through to housing issues etc. A similar number of cases were closed (72 being carried forward from the previous year and 83 to be brought forward into next business year). As always, the issues and/or trends identified through our legal work 'informs' our policy & research work and contributes to NICCY's advice provided to Government and relevant authorities.

'The Commissioner for Children and Young People (Northern Ireland) Order 2003' ('the Order') established the Office, the principal aim of which is 'to safeguard and promote the rights and best interests of children and young people in Northern Ireland' (Article 6). As the independent human rights institution (IHRI) for children in this jurisdiction, 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 is also to 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. As set out in a later section, NICCY has a range of powers to support the implementation of statutory duties; addressing breaches of children's rights is central to our work and that of the Legal & Investigations Department. This year has seen a range of concerning developments in respect of the potential erosion of human rights – the proposed replacement of the Human Rights Act with a British Bill of Rights, Nationality & Borders Act, Article 2 of the NI Protocol, and the ongoing delays in a Bill of Rights for NI.

The impact of the COVID-19 pandemic continued throughout the year and this was reflected in complaints received to our department. While restrictions became somewhat more relaxed as the year progressed, nonetheless issues still remained or arose, for many. Access to / provision of services particularly in education and health were the majority of complaints received due to the ongoing pressures on public services.

Delays in addressing the needs of vulnerable children in some instances led to court cases and interventions by NICCY on their behalf. Our formal investigation work continued as did our other areas of legal work e.g. legal opinion on proposed changes to the Human Rights Act; protected disclosures, legal advice etc; albeit impacted at times by the pandemic and government's response. We continue to experience and address the ongoing issues exacerbated by the pandemic in a context where the Organisation like others, had transitioned to working from home (though has more recently moved towards adopting a hybrid working approach where possible).

Part of our work (since 2019) in achieving NICCY's mission (as set out below) has involved developing our 'CRIA' work delivering introductory sessions with departments and relevant authorities. This child rights impact assessment framework and toolkit (from our work as members of ENOC*) is an approach to ensure new laws, policies and strategies are child rights compliant. 'Getting it right from the start' will (potentially) reduce instances where children's rights are/ may be breached. We have had commitment from NICS to include this in the Civil Service Handbook and to include our training modules on their online Training Platform. Increasingly we are seeing reference to such an approach in the judicial arena / court cases which is very welcome. Positive commentary from the Judiciary on our work overall has been welcome.

Mairead McCafferty
Chief Executive / Head of L&I

The Legal and Investigations Team

The Legal and Investigations (L&I) Department is headed up by our Chief Executive, Mairead McCafferty PQH LLM. During 2021-2022 the L&I Team comprised Mairead and:

- ▶ Peter McGettrick BCL, Senior Legal & Investigations Officer
- ▶ Robert Hunter MLegSci, Legal & Investigations Officer;
- ▶ Shari Holmes LLB, Legal & Investigations Officer;
- ▶ Celia Lynn-Hawkins LLB, Legal & Investigations Officer; (maternity cover);
- ▶ Deborah Crawford LLM, Legal & Investigations Advice Officer; and
- ▶ Steven Chapman, Administration Officer.

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.



NICCY'S STATUTORY DUTIES & POWERS

NICCY's duties and powers, as set out in legislation are summarised below and in the following diagrams:

Article 7 of the 2003 Order outlines the **duties** of NICCY 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 NICCY'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, 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 NICCY

Art 7(1), (5) (a)

Monitor & Review

The effectiveness of Law and Practice

The adequacy and effectiveness of Services

Art 7(2) & (3)

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)

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 information, 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 (2) & (6)

Address Complaints / Rights Breaches Advocacy

Assist with Complaints to / or against Relevant Authorities

Bring, Intervene in, or Assist in, Legal Proceedings

Art 11, 12 & 14



Year 6
Multiplication
with Whiteboards.

1. Calculate 8×378 3014
2. Calculate 38×58 2204
3. How many times will 7 divide into 185? 26
4. Calculate $427 \div 5$, giving the remainder. I hope it's a cow. $85 \text{ R}2$
5. Find the total weight of 12 rods of metal each of weight 100g. 1200g
6. How many complete strips of paper 48 cm long can be cut from a roll 12 m long? 25
7. Find the value of $12 \div 3 + 5 - 20 \div 4$ $12 \div 3 = 4 + 5 = 9$
8. Find the value of $10 \div (2 - 3) + 3 \times 7 + 4$ $10 - (2 - 3) = 10 - (-1) = 11$
 $11 + 21 = 32$
9. Find $15 \div 2 \times 3 - 12 \div 2$ $15 \div 2 = 7.5 \times 3 = 22.5$
 $22.5 - 12 \div 2 = 22.5 - 6 = 16.5$
10. A bus leaves the station at 8.20am and returns to the depot at 10.17pm. How long is the journey last? $1 \text{ hr } 57 \text{ min}$

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 NICCY to fulfil the duties of the Office. In line with these legal functions, the following is from our Corporate Plan - revised for 2021-23 business years, to reflect the ongoing impact of the Covid-19 pandemic which led to an increase in the volume and nature of complaints, as well as changes to NICCY’s key priorities – it sets out how NICCY uses these powers to address breaches of Children’s and Young People’s Rights in Northern Ireland such as:

- ▶ **Complaints Handling** (casework) against relevant authorities, across a range of areas: special educational needs and disabilities including SENDIST Tribunals; the impact of Covid-19 e.g. ongoing response arrangements across health, education and secure settings; access to/ waiting times for healthcare treatment and/ or surgery; mental health issues; quality of treatment; education arrangements; the transfer test and exam/assessment queries; housing; care arrangements; and respite services.
 - ▶ **Conducting Independent Investigations** where breaches of the rights of children and young people are alleged, and where internal complaints processes have been exhausted.
 - ▶ **Formal Investigations** into cases which require formal use of NICCY’s powers under Articles 16 – 23 of the 2003 Order, including those which expose systemic failings adversely impacting on Children’s Rights. NB: We are currently finalising work in respect of NICCY’s first formal investigation, the report on which will be published in the 2022-‘23 business year.
 - ▶ **Bringing, Intervening in or Assisting with, Legal Proceedings** in addressing 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 in the provision of legal funding. These sit ‘outside’ complaints casework and are dealt with using established criteria;
 - ▶ **Holding Government to Account** when they fail to protect children’s rights. This involves working with our Policy & Research colleagues to raise issues of concern, make recommendations to government and relevant authorities, on important issues affecting children;
 - ▶ **Providing Advice** to ensure the implementation of children’s rights in compliance with current legislation, strategies and policies and respond as/where appropriate to government consultations;
 - ▶ **Strategic Litigation** i.e. which aims to bring about positive legal changes in children’s rights and which may also set precedents, thereby potentially impacting larger numbers of children, is an area we have been focused on in recent years. (*see later section*).
 - ▶ **Processing Protected Disclosures** in line with the ‘Public Interest Disclosure (Prescribed Persons) Order 2014 (Public Interest Disclosure (Northern Ireland) Order 1998 as subsequently amended). These are reported on annually as required.
- Relevant details and information on each are available on our new website or via our Legal and Investigations Staff.



COMPLAINTS CASEWORK SERVICE

In the 2021/22 business year our Complaints Casework Service Staff:

- ▶ Dealt with 386 new cases;
- ▶ Carried forward 72 cases ongoing from the previous business year;
- ▶ Successfully closed 388 cases; and
- ▶ Brought forward 83 cases.

The 2021/22 business year was the 2nd full year of the Covid pandemic, and it was once again inevitable that Covid and issues arising from the pandemic would dominate our work. We received a large increase of new enquiries from the previous year as society began to re-open and restrictions impacted on various services. Matters being raised were not only novel, but could be very emotive for parents, carers, children and young people e.g. for every query we received asking our office to assist in opposing the wearing of facemasks in schools, we received requests for support in maintaining this restriction. NICCY's approach always followed the medical advice from the Chief Medical Officer and the Department of Health, and while this disappointed some complainants, we did try to ensure that the rights of all children and young people were upheld in every context.

We are also increasingly being contacted for guidance and assistance from professionals in the statutory and voluntary sectors who work with children and young people. This is indicative of increased awareness levels of NICCY and our reputation in the sphere of children's rights. We welcome the opportunity to assist and advise on any aspect in which a person believes that a child may be at a detriment, or their rights are not being upheld.

We strive to ensure equality of access to our services and can provide access to interpreters and carry out outreach visits when necessary. 'Clients' can access our complaints service by telephoning or emailing the office; they are then usually asked to complete an online referral form to

capture all relevant details (see back cover for website details). If desired, a caseworker can complete the form for a client over the telephone. We have a strict policy of contacting clients within 5 working days of the form being allocated at our weekly 'Complaints Allocation and Review' (CAR) meetings.

However, when we are contacted by a child or young person, we will respond on the same day as they are always given priority access to our service.

Our legislation sets out matters with which we can and cannot assist and if we are contacted on an issue that is outside our remit, or another organisation is better placed to advise, we signpost appropriately.

Cases are closed when the matter has resolved satisfactorily and clients are informed. If a client disengages, our policy is to contact them to advise we will be closing the case while informing them they can revert to us if further matters arise.

We record all contacts with clients on our secure data management system; these records are confidential and treated in line with GDPR legislation. We collect feedback from clients and welcome all comments as this helps to improve the delivery of our services.

In the statistical overview which follows, we have outlined the categories of complaints we have received. The categories are identified using the primary matter about which the client is contacting us, this ensures that categories are not duplicated.



STATISTICAL OVERVIEW 2021-2022 BUSINESS YEAR

Chart 1

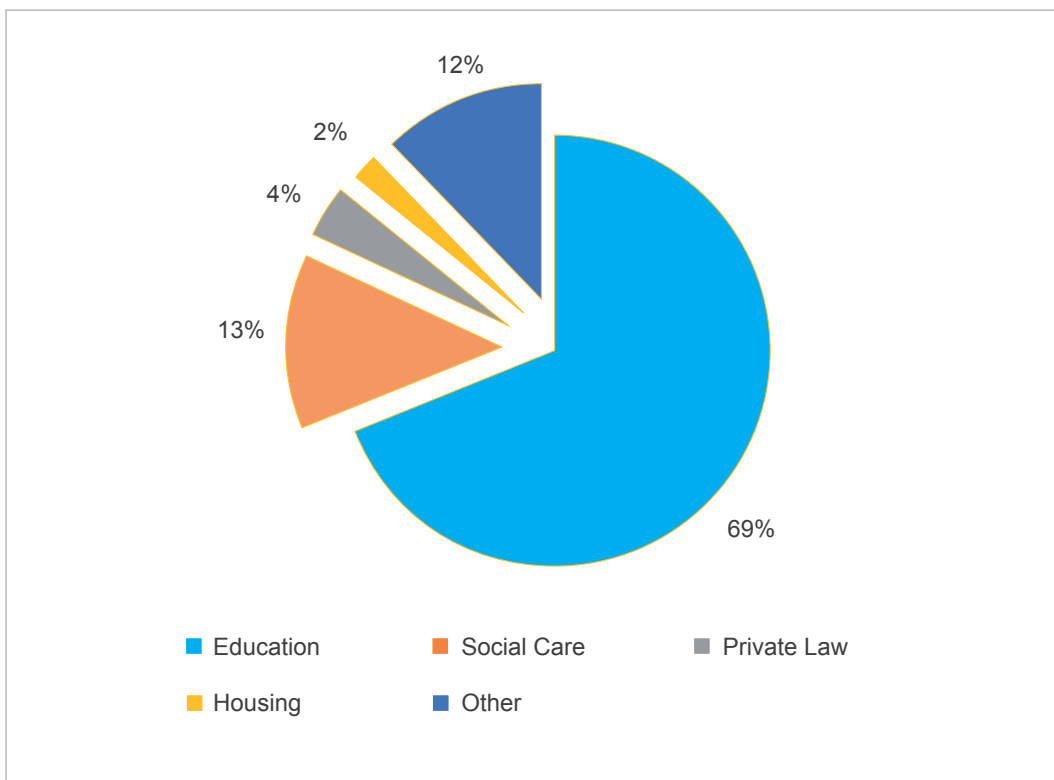
2021-2022 Types of Enquiry

Total New Complaints - 386

Total Closed Complaints - 388

In the 2021-22 business year we dealt with a significant rise in queries. We had 386 new enquiries and closed 388. This is a significant increase from the 246 new enquires and 277 closed cases in 2020-21.

Complaints originate from a variety of sources, while mainly Parents/Carers and professionals working in the statutory and voluntary sectors, we also receive these from MLAs, Councillors and various political parties and community representatives.



The queries regarding education rose from 65% to 69%. The education queries are broken down in pie chart 2.

There has been a decrease in social care queries. The rise in social care cases in the previous year can be explained as the services were hugely impacted in the short term by the Covid restrictions on the provision of services. In the previous year some services were delayed or stopped completely as provision for alternatives had not yet been made. This year, social care queries often involved delays in access to services, many of which were a result of the previous year's delays and lack of resources. We received queries about the provision of services, delays and cancellations of vital appointments for matters such as mental health counselling, assessments and medical procedures.

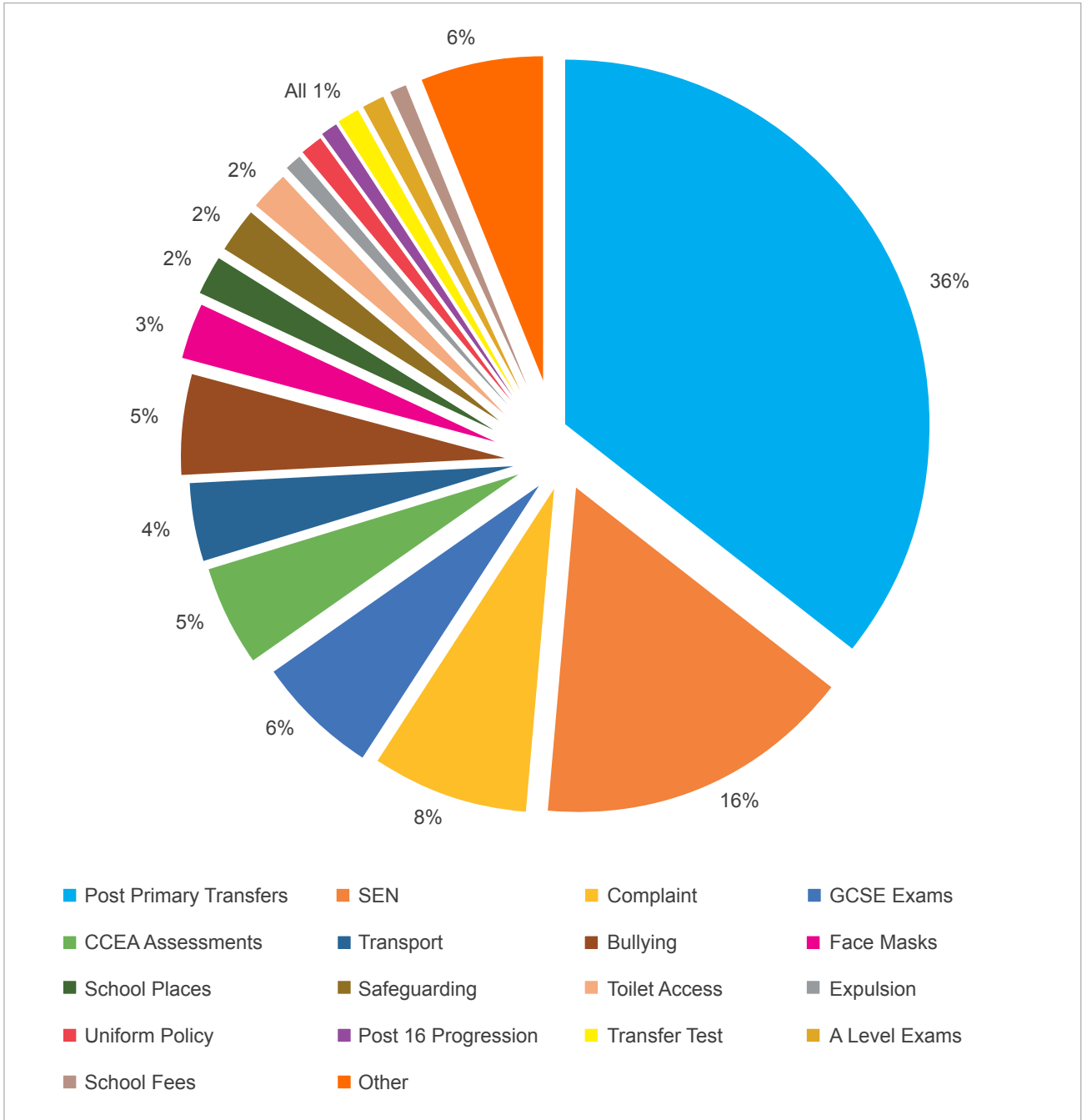
The 'Other' category contains matters which we have not needed to advise on previously, such as 'face mask' queries. As the Covid restrictions and advice from Government

changed and were updated, we ensured we gave parents and carers the most up to date advice and ensured that the rights of children were not being negatively impacted in the implementation of this advice. We gave advice and assistance to parents whose children were in secure facilities. Visits were suspended for these facilities for a time, in line with Covid guidance. The impact on the young people was extremely difficult and we were able to liaise with secure facilities to provide other ways of meaningful contact between the young people and their parents/carers. As some services, such as counselling, could not be carried out face to face, telephone and online appointments were arranged, and these were very effective for providing much needed support to young people.

We continued to signpost to other agencies such as the NIPSO or NI Police Ombudsman's office who deal with complaints about the PSNI, an area that is outside the remit of NICCY.

Chart 2

Education Enquiries



Range of Education related enquiries

The pie chart above shows a slight rise in Special Educational Needs ('SEN') queries (16%) which have continued to rise each year. We have added a few more categories to reflect the variety and complexity of the queries as parents and carers contacted us

on a broad range of educational issues. We have advocated for children and young people in this important area and contribute to our Policy & Research team's work on reports, papers and advice to government on systemic issues first raised with to us through our complaints casework service.

Post-Primary places

We received a huge influx of queries as a result of the post primary school allocations for the 2021-22 academic year, announced in summer 2021. As the transfer test had been cancelled due to Covid, schools drafted their own entrance criteria for the 2021-22 academic year, and it caused many problems to students and their families given the myriad approaches and criteria adopted by different schools. Many children were not allocated a place at their chosen school. Parents and carers contacted us concerned at the impact this had on their child. We drafted and sent a detailed letter to all querists which outlined potential options to challenge a decision if the admissions criteria had not been correctly applied. Some parents chose to appeal the school allocation by way of the Exceptional Circumstances Body. We had over 100 queries and contacted each of them by telephone providing extra support and advice. Some children were unplaced and additional assistance was provided for those children to secure a place in a post primary school.

Special Educational Needs

Normally our largest area of work, this year it has been superseded by the post primary applications queries. NICCY can advise and assist at all stages in obtaining a statement for SEN. Occasionally a statement is not required, or there may not be enough supporting evidence. NICCY can advise on liaising with the child's school to ensure that they are doing all they can to meet the child's needs. Assistance involved 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.

The SEN matters we assist with are often complex and multi-faceted, and are sometimes coupled with school complaints, transport or bullying issues. We can advise and assist parents with all these issues. We have a SEN Parents Guide on our website which can assist parents and carers with

information on the processes involved. The Education Authority ('EA') have created a new online portal for parents to request statutory assessment which has made the application easier for parents, and NICCY help direct parents to this new system.

We have had a number of successful cases conceded prior to the hearing, the outcomes of which were that resources/services were provided by the Education Authority to meet the acute needs of children and young people.

School Closures

The category of school closures is a new category in the 2021-22 annual casework and legal report. The application of the Department's 'Sustainable Schools Policy' meant some schools were to be closed, with pupils being sent to other schools. This had resulted in great distress to parents and children as, very often - especially in rural areas - the nearest suitable school was a considerable distance away and required a complete change in transport arrangements. The Commissioner was involved and corresponded with the Department of Education about her concerns and asked for, and received, assurances that the rights of children affected would be a paramount consideration in transition.

GCSE, A & AS Level Exams/Assessments

This is the category which prompted most complaints directly from young people themselves. It caused a huge amount of stress among those due to sit exams and led to further issues for them regarding further and higher education entry. The impact of the changes on the mental health of the young people was an obvious concern and NICCY had spoken out on the topic. NICCY engaged with the relevant Minister to call for urgent action to cancel the exams and lessen the adverse impact created by the ongoing situation on children. The legal team advised a number of clients on changes in what was a fast moving and fluid situation and resolved issues of concern.

Transport

We received complaints about school transport, and often these were part of a wider SEN query. Many geographical areas do not have suitable transport provision to ensure that pupils avoid travelling excessive distances to their schools. In more rural areas, there is a lack of regular public transport for pupils to get to school. We also received complaints due to a shortage of drivers and escort staff for children who required EA transport to get to and from school. NICCY raised this matter at senior levels in the EA and received assurances steps would be taken to resolve matters.

Post-16 progression

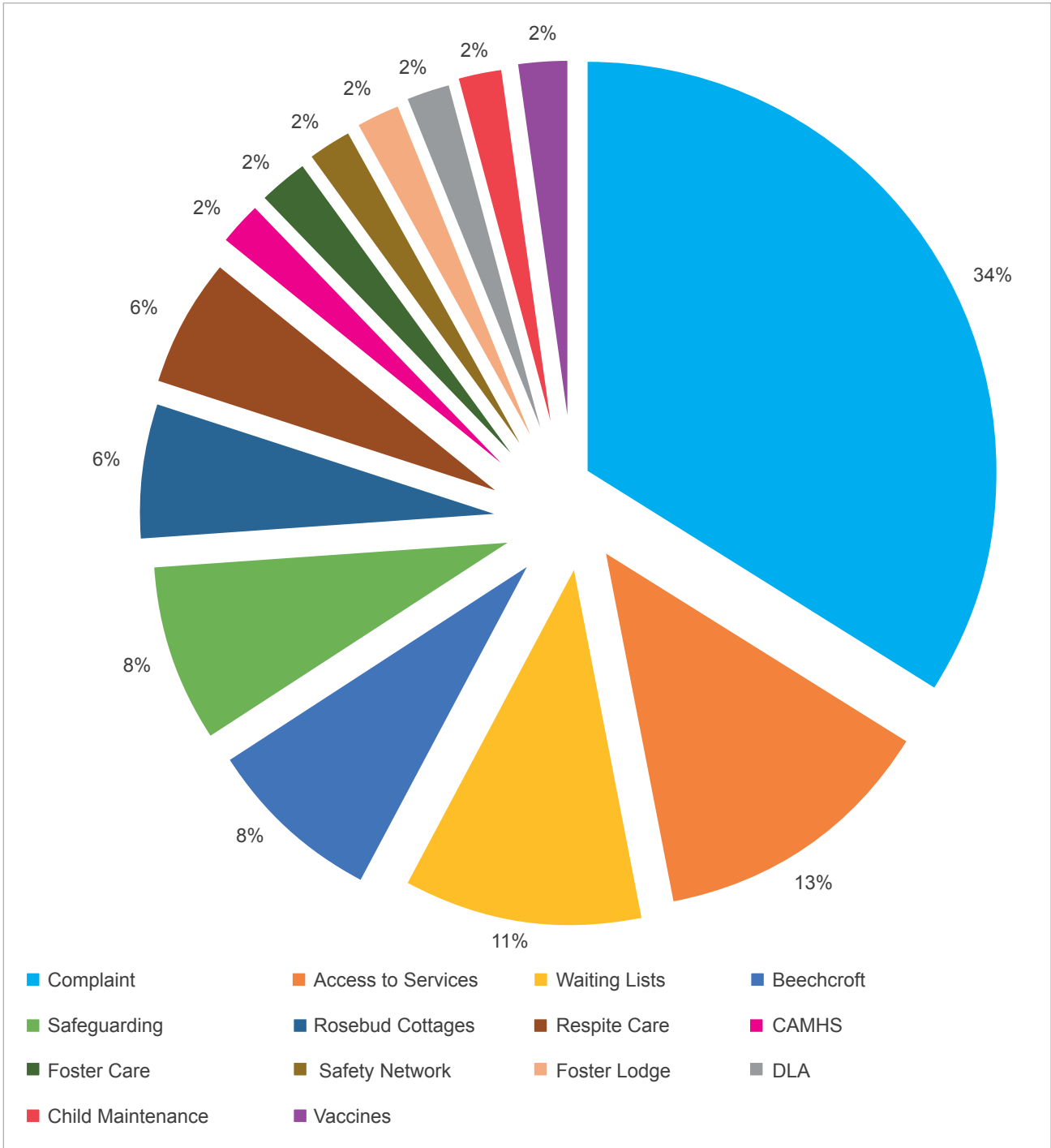
NICCY received several complaints from parents who were concerned that they did not have a placement for post-16 progression. Some of the complaints were from parents of children who attended Special Schools. NICCY contacted the EA's Education Transition Co-ordinators to ensure that arrangements were made for appropriate placements for those children.

Toilet access

NICCY received complaints from young people around toilet access in schools. Some schools introduced restricted toilet access, limited to breaks and lunches. This caused considerable distress to pupils, some of whom had conditions such as Crohn's disease. Many pupils and parents felt strongly that it was unreasonable for pupils to only have access to toilets and handwashing facilities for such a limited period of time in the school day. The issue was also picked up by local media. Following NICCY's representations to the schools, many changed their policies to provide access and open the toilets more frequently.

Chart 3

Social Care Enquiries

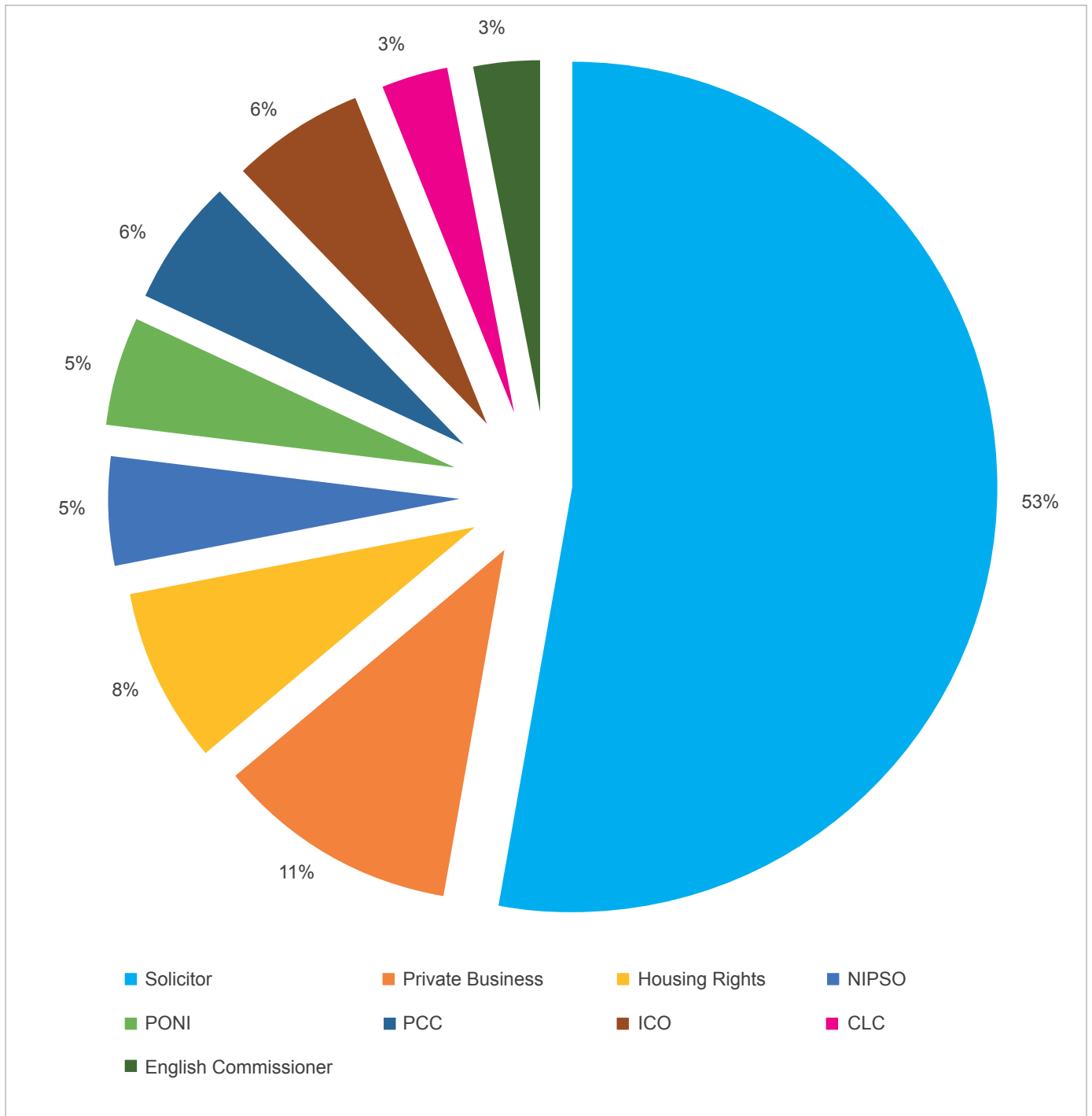


We have included this pie chart as we are continuously receiving complaints regarding the provision of services to children and young people. Vital services, such as respite care, were not re-introduced after being put on hold due to Covid restrictions. We have been contacted by a range of stakeholders to include parents, carers, voluntary agencies and children’s centres, all concerned at the

impact the delay in having these services reinstated was having on families. In some cases, children were having to go into care as their families could no longer cope with their significant needs. We have dealt with individual cases and raised these matters at a departmental level when appropriate.

Chart 4

Signposting



NICCY's legislative remit is such that we are required to signpost clients as/when appropriate. We refer clients to statutory and voluntary agencies such as PONI, NIPSO, Advice NI, ICO and the Patient Client Council.

When the case requires, we work with other agencies to ensure the rights of children and young people are being upheld and we have worked closely with the Children's Law Centre



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.

Special Educational Needs 1: Administering of Medication

NICCY was contacted by the parent of 'Benjamin' due to concerns that he was not having his medication administered as set out in his Statement of Special Educational Needs. This resulted in a deterioration in his condition leading to further intrusive treatment which could have been avoided. The child had also been suspended from school for an incident attributable to his condition. NICCY advised that a complaint should be submitted by the parents to the Board of Governors. Due to the seriousness of the complaint and the impact on the child, a NICCY staff member attended the meeting with the Board of Governors, alongside the parents. The suspension was retracted, and the child's Individual Education Plan was updated with sufficient details. The child is now thriving in school, he is settled and was placed in the top 10% of the year for academic performance. The advice and assistance provided made a significant difference to the child's wellbeing and achievement in school.

Special Educational Needs 2: Learning Difficulties

NICCY was contacted by a school who had a pupil who was in the care of the Trust. The pupil, 'Jo', had some difficulties in accessing the curriculum. A roundtable meeting had been arranged between the school, social workers and the pupil's care workers which NICCY attended - to ensure the rights of the pupil were being upheld by all parties. NICCY suggested a reduction in the number of days the child attended, which was possible whilst preserving the child's right to education. The outcome meant a change in school days, which enabled the child to fully access the curriculum and the child is now happier and more settled in school.

Special Educational Needs 3: ASD

'Idris' presented with signs of autism spectrum disorder, though his parents were waiting on a formal diagnosis. This formal diagnosis was taking some time and he was struggling in school. A statutory assessment was requested by the parents but declined by the EA. NICCY gave advice regarding the drafting of an appeal of this decision and before the matter reached the tribunal stage, the EA conceded the case and agreed to carry out a Statutory Assessment.

Special Educational Needs 4: Mental Health

'Fletcher' could not attend mainstream school due to severe anxiety. He wishes to become a medical doctor which requires A Levels. The EA's Education Other Than at School ('EOTAS') team were not engaging with the parents on the issue and the young person did not have an EOTAS place having missed the 2021 intake. NICCY contacted the EA EOTAS team to ensure that he had been provided with an appropriate placement for the upcoming school year. He was subsequently granted a place and will study the A Levels he needs to pursue his chosen career.

Removal of Child from School Register

'Elyza', a child with special educational needs, had been removed from the school register of a mainstream post-primary school. NICCY provided advice and guidance to the parents and engaged directly with the school highlighting that Department of Education Circulars 2010/07 and 2020/08 set out the six specific circumstances in which a pupil's name may be removed from the register. This situation was not one of those six. The school had removed the child's name contrary to the guidance and refused to re-register the child. NICCY engaged with the EA, the school and CCMS on behalf of the family. The family subsequently issued Judicial Review proceedings and the school agreed to re-register the child.

Bullying 1:

We were contacted by a parent whose daughter, 'Rebekah', was being subjected to bullying by her classmates, both in and outside school. The parents' attempt to have the school deal with this had proven unsuccessful. NICCY contacted the school and asked them to confirm what measures they had taken to address the bullying. We obtained a copy of the school's anti-bullying policy and were able to successfully challenge the school given they were not adhering to their own policies. We asked that the school vigorously implement their policies to ensure the safety of our client's daughter. The bullying ceased, 'Rebekah' is happier and now feels safe both in and outside of school.

Transgender Bullying 2:

A transgender child, 'Alex', was having difficulty settling into her new school, feeling left out, isolated and also the victim of bullying. NICCY provided advice and guidance to the parents in relation to addressing the bullying issue with the school and provided signposting to support organisations for trans people and their families. The parents were able to resolve the issues with the school and 'Alex' is now much more settled within school.

School Incident Complaint

The parent of James contacted our office in relation to an incident that had happened at her child's school. The parent had seen a teacher drag her child, who has autism, into the school. The parent had reported the incident to the principal and a meeting was scheduled to take place the afternoon of the day the parent contacted us. NICCY provided advice and guidance to the parent in preparation for the meeting with the school. This information enabled the parent to attend the meeting fully prepared and with more confidence. The outcome of the meeting was very positive, and the parent was happy with the advice from NICCY and the way the school subsequently handled the issue.

Transport 1:

'Theo' was refused school transportation as he was not eligible for transport assistance, his school being located within the 3-mile statutory qualifying distance. The child had suffered extreme trauma in the past, resulting in mental health issues which contributed to his inability to walk to school. He had no other means of transportation. NICCY provided the parents with advice and guidance which enabled them to submit a 'Transport: Exceptional Circumstances Appeal' against the decision on the grounds of serious mental health concerns for the child. Whilst the appeal was not successful, NICCY's advice empowered the family to submit the appeal and challenge the decision through normal redress mechanisms, something the family were not aware of prior to contacting NICCY.

Disability: Transport 2:

'Tina' attended a Special Education School and was on the register for school transportation. The parents had transported Tina to school in the morning, however, due to a change in circumstances, they were no longer able to do so. The parents contacted EA Transportation to confirm that Tina would be availing of transportation to school and discovered that her name had been removed from the school bus morning register. The parents were told that she was taken off the list for the morning run because they could not fit her wheelchair on the bus. NICCY assisted the parents by providing advice and guidance and supported them in continued liaisons with the EA Transportation Department. The family was successful in securing school transport for her on another bus for the morning run.

Health Treatment: Surgery Provision

NICCY were contacted by the parents of a young child, 'Nina', who was on a waiting list for essential surgery. The surgery had been scheduled to take place on three separate occasions, all having been cancelled at the last minute. The multiple cancellations of the surgery had a devastating impact on the family and was affecting the child's emotional and physical well-being. The child also had a diagnosis of autism, and the emotional impact of the cancellations was significant. Each time, the family had prepared the child for the possibility of surgery which, when cancelled, left the child feeling disappointed and confused. The parents were concerned that there would be even further delay, as they had been told that this type of surgery was postponed indefinitely. NICCY advised the parents regarding their option of making a formal complaint to the relevant Health and Social Care Trust. The parents made a formal complaint and received a date for the surgery, which successfully took place when scheduled.

Health Treatment: Eating disorders

'Tom' was clinically diagnosed with an eating disorder and was being treated as an inpatient in a regional hospital which could not meet his needs. NICCY directly engaged with the relevant Health and Social Care Trust on what help was available for those with clinical needs. Steps were then taken by relevant agencies to properly address care planning for 'Tom'.

Health Services: Mental Health

'Jenny' had medically diagnosed issues which adversely impacted her mental well-being and general behaviour. NICCY advised her family on the processes to be followed in accessing and receiving help from statutory agencies. The information given helped the family decide how they then wished to proceed in their own pursuit of the matter.

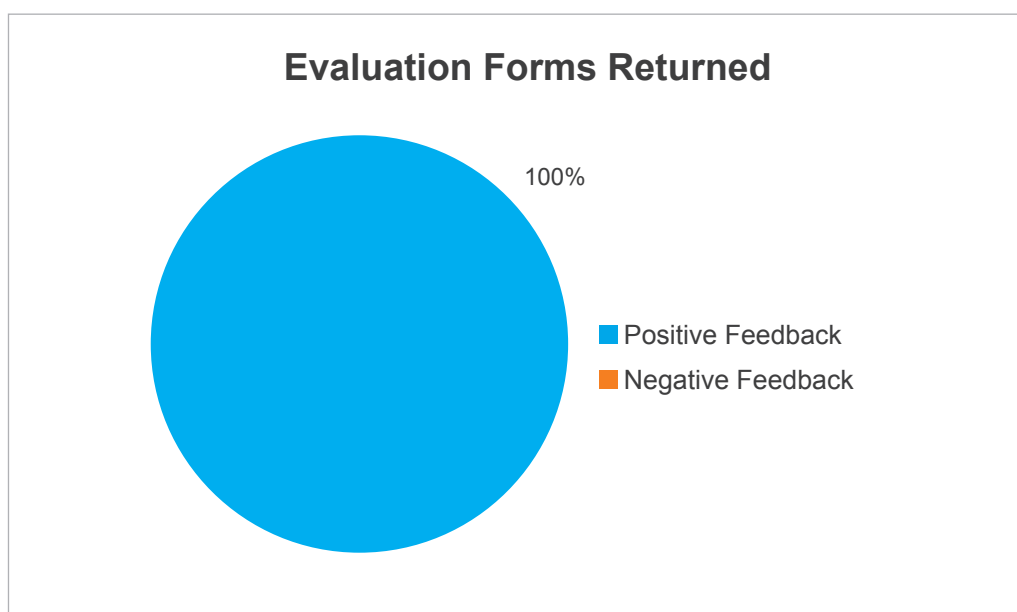


EVALUATION FEEDBACK

Feedback on our complaints casework service is welcome as the L&I team strive to improve the service. When we close an enquiry, each client is sent an evaluation form. These are mostly sent by email with a link for the client to complete the form and submit confidentially. On occasion we will send a paper copy if, for example, the client does not have access to an internet connection or email address.

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

Of the evaluation forms returned in 2021/22, 100% contained positive feedback.



Here is a selection of comments that clients made on the returned forms:

“Very detailed conversation on phone, provided a clear step by step plan and actually gave other strategies on how to manage our query. Very pleased.”

“Thank you Peter for your commitment to the children involved. You worked tirelessly until you got the decision that was in the best interests of the children”

“Deborah was fantastic, listened to my concerns and gave the correct advice. She took time to give a follow up call after our school meeting.”

“Robert Hunter was very patient, polite and helpful in relation to this matter. He provided information and referred us to Deborah who had experience of advising on ECB matters. Deborah contacted us and was helpful in terms of the questions that may be asked at the ECB and how to prepare for it.”

“Thank you Celia for your guidance, it’s actually what I needed. Sometimes when you are faced with a situation you just need someone to give you a step by step guide to what to do next.”

“Great guidance and advice which resulted in a successful appeal for our daughter.”

“It was a great service that provided support to me when I needed it and I was successful in getting the statement which has resulted in my daughter getting a class room assistant which has had such an impact in her confidence and her achievements in school.”

“I couldn’t have asked for more from Deborah she was understanding and patient beyond my expectations and nothing was too much for her. Her advice was extremely helpful and I cannot thank her enough.”

Conclusion

Feedback was glowing on a number of evaluation forms. The positive comments reflect the experience that the vast majority of our clients have when they engage with our service. It is also pleasing to not have received any negative feedback forms while recognising that negative feedback is almost always a result of restrictions on our remit. Whilst our remit remains the same as in previous years, we have worked hard to ensure that clients we cannot assist understand why, and to signpost them to relevant organisations whose remit means they can.



LEGAL PROCEEDINGS SUMMARY

It has been one of our aims over recent years, that the L&I Department increase involvement in external legal proceedings, such as through judicial reviews, interventions, strategic litigation etc. which aims to address breaches of children's rights and in so doing, benefits greater numbers of children as well as raising awareness of this statutory function of NICCY. We also wish to continue to raise the profile of our work among the legal community with the aim of increasing impact.

NICCY's unique role as the statutory body established to safeguard and promote the rights of children and young people in Northern Ireland, means we will 'add value' to those cases in which we intervene bringing the expertise and 'weight' of the Office to bear. Experience tells us NICCY's interventions are respected by the Courts and our contributions welcomed.

This year we have continued our involvement in several judicial review cases regarding delayed discharge of young people from secure health facilities. This has been at the request of the families involved and their legal representatives who are keen for expertise, input and advocacy from NICCY in their Court proceedings. We continued to receive requests for NICCY to intervene from practitioners and assessed all applications using our legal policies and procedures.

Interventions

1. We continued our work in a range of Judicial Review interventions concerning a number of young people with significant learning / mental health difficulties in **secure care**. Issues included lack of suitable residential accommodation for detained young people, insufficient clarity (including between public authorities) as to which statutory agencies are/ were responsible for particular aspects of care and planning, unsuitable care arrangements and unclear communication with families. Unfortunately, there was

and continues to be, considerable delay in discharge 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, adverse impacts upon the emotional and mental wellbeing of the young people, as well as causing significant stress to their families. Two of the judicial reviews have been satisfactorily completed, however three are still ongoing and have developed into multi annual legal actions.

The involvement of NICCY in these matters has been in support of the children and families and has provided further support and assurance to those involved on the specific 'child rights approach'. The contribution of NICCY to this suite of cases to date has helped focus attention on the need for child rights centred strategies, policies and approaches. The judiciary has been welcoming of our involvement and consistently comments on same.

2. NICCY had intervened in a judicial review taken against the **Special Educational Needs and Disability Tribunal (SENDIST)** in a case that involved a deprivation of liberty element on the use of restraint and seclusion in educational settings. The Court found that the role of SENDIST was to determine the appropriateness of education provision and decide on a placement, but that authorisation for any deprivation of liberty was outside SENDIST's remit. Such authorisations are to be sought under the Mental Capacity Act (NI) 2016. In consequence of NICCY's submission the Court took the view that the Department of Education and the Department of Health should prioritise formalising clear guidance regarding authority to deprive of liberty. This case was heard in April 2021 and judgement delivered in May 2021.

3. NICCY intervened in a judicial review being taken on behalf of an 8 year old Applicant against restrictions, introduced as part of the wider general Covid-19 restrictions, **banning outdoor sports** amongst children. Amongst the Applicant's arguments was the failure to consult with the Children's Commissioner prior to these regulations coming into effect. As the statutory agency tasked with promoting and safeguarding the best interests of children, we are in an ideal position to give government departments advice and assistance on the impact of new measures or restrictions. The lack of consultation with our office was the central aspect of our involvement. The case was heard in October 2021 and we are awaiting judgement.

Formal Investigation

Work continues on NICCY's first **Formal Investigation** using our statutory powers under Articles 16 - 23 of the 2003 Order – which grant NICCY powers similar to those of the High Court in relation to the compelling of evidence / witnesses etc. The final report will be published later in the coming business year. While this was a complex and lengthy process, we wished to ensure that appropriate outcomes and learning follow from the report which will hold both adverse findings against, and recommendations for, the relevant authorities.

As part of our quality assurance and robust approach, all NICCY Staff involved in this work have completed Accredited Investigative Practitioner Training and we engaged an **'expert panel'** to provide us with their 'discipline specific' expert opinion to inform our Report i.e. a QC, Social Worker, Child & Adult Psychiatrist and a Paediatrician. The nature and extent of the documentation necessitated their professional expertise and analysis to assist in completing the investigation.

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 formal investigation report.

Legal Funding Support

NICCY has a small legal funding budget which it can make available, following an application to our Legal Funding Committee, to support cases if they meet the relevant criteria. During the year under report, we had no applications for **financial assistance** to assist with initiating legal proceedings.

Legal Opinions

On 14th December 2021 the UK Government launched a three-month consultation process on their aim to remove the Human Rights Act (HRA) 1998 and replace it with a Bill of Rights. NICCY appointed Counsel to provide a legal opinion on the impact of revoking the 1998 Act on children / children's rights in Northern Ireland, including a retrospective review of its importance in previous caselaw relating to children here.

Use was made of the legal opinion to inform the conclusions and recommendations in NICCY's submission to the UK Government consultation. NICCY, along with our counterpart Commissioners in Scotland (CCYPS) and Wales (CCfW) prepared a joint submission highlighting the specific issues that would affect children in their respective jurisdictions.

Strategic Litigation

As stated earlier, we wish to build on and expand our strategic litigation work as above. As part of this we delivered a presentation to the ENOC ¹ /ACRiSL ² Seminar held in March. This covered some of the cases which we regarded as strategically focused on achieving judicial rulings and judgements which change practice, influence legislation and policy and which also subsequently informs NICCY's advice to government.

Strategic litigation is defined as '*litigation that seeks to bring about positive legal and social change in terms of children's enjoyment of their rights*' ³

This is in line with Articles 14 and 15 of our founding legislation. Such approaches often result in positive judgements benefitting not only the child at the centre of the case, but sets a precedence or changes to practice for many others going forward.

Examples used included current and past NICCY cases on:

- ▶ Equal Protection (2006 NICCY JR Ref GIL7001);
- ▶ Special Educational Needs ('Statements' and appeals to SENDIST);
- ▶ Deprivation of Liberty (*iro* use of restraint and seclusion);
- ▶ Outdoor Sports (JR130);
- ▶ Post primary transfer (FSME criteria); and
- ▶ Our current Formal Investigation (under Art 16).

We have referred to our child rights impact assessment work as a way of child rights compliance (*see earlier*) in more recent cases.

It is pertinent to note here that through our Complaints Casework, we also have outcomes which change practice on the part of relevant authorities thereby impacting greater numbers of children. Cases for further consideration in respect of strategic litigation can also be identified through our casework.

¹ ENOC 'European Network of Ombudspersons & Commissioners for Children' of which NICCY is a member; 42 Institutions across 34 member States.

² Advancing Children's Rights in Strategic Litigation – a 3-year global research project by partners in academia and advocacy working on child rights litigation to develop a model on same.

³ www.acrisl.org



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 14 ‘protected disclosure cases’, having opened a further 2 cases in the 2021-22 business year (1 was closed in-year). These involved issues of concern in relation to alleged maltreatment of learners by a training provider and a separate case of alleged maltreatment of children within a nursery. Both new matters are still ongoing as NICCY investigation is not closed until we have received the necessary assurances that there is no safeguarding risk or rights breaches in respect of children involved or indeed potentially any others.

In our previous protected disclosures cases, we investigated and received the necessary and required assurances from the relevant authorities involved that:

- ▶ The matter had been suitably investigated;
- ▶ Appropriate actions were taken; and
- ▶ Measures put in place to ensure non repetition and good practice.

On closure, the ‘originators’ of the Complaints are all contacted and informed of the positive outcomes.

NICCY is obliged to report annually to our Sponsor Department on such disclosures received and does so in our Annual Reports.

Legal CPD Events

As well as providing staff training as part of our organisational ‘L&D Strategy’ each year. We have for some years now, delivered continuing professional development (CPD) events for legal and other practitioners, to promote awareness of children’s rights and their application to practice across the range of professions and disciplines. We also use our CPD events to highlight relevant legal proceedings and raise awareness amongst the profession of our work.

Our legal CPD this year, was once again held during Human Rights Festival in December 2021. Entitled ‘*Restraint & Seclusion in the educational context: a legal perspective for parents, educationalists and practitioners*’ and delivered by Kevin Morgan BL, it focused on recent developments in the area of Restraint and Seclusion in schools and discussed recent case law, especially the case of *In the Matter of a Minor JKL* [2021], in which NICCY was an intervenor.

NICCY also published its Report ‘*Neither Seen Nor Heard*’ on the use of restraint and seclusion that same month. Interventions as we know, allow the Court to be presented with additional, relevant and factual material beyond the particular circumstances of the Applicant and supports them in achieving redress of breaches of children’s rights. Feedback on the event was very positive and a number of cases were subsequently referred to us for consideration of intervention following this.

We look forward to developing our next CPD event in 2022.

⁴ These have included e.g. ‘*UNCRC & domestic incorporation*’ delivered by Tony McGleenan QC; ‘*SENDIST: A Practitioner’s Guide*’ delivered by the Tribunal Chair Mr Paul Shevlin; ‘*Better than that: The Family Justice Review*’ delivered by Sir John Gillen; ‘*The Coming of Age of the Children Order*’ delivered by (then) The Honourable Mrs Justice Keegan;



LOOKING FORWARD

Earlier in this report, we highlighted the ongoing impact of the external context – political, economic, the Covid-19 pandemic, pressures on public services etc. – in such a context, it is anticipated we will see an increased ‘threat’ to rights, therefore it is more important now than ever to focus on addressing these. We currently have no NI Executive which, apart from the obvious impact of a lack of government, continues to adversely impact on attempts to address and indeed progress work on children’s rights.

Nonetheless, we continue to address breaches of children’s rights, expand our legal work and increasingly develop our expertise accordingly. This next business year we are looking forward to bringing in a new Head of Legal & Investigations as we continue to grow NICCY’s legal work overall and focus on strategic litigation.

In keeping with NICCY’s aim to ensure that children and young people live in a society where their rights are respected and realised, we will continue to work to bringing about positive outcomes for vulnerable children and young people and remain committed to achieving this - part of which entails ensuring access to appropriate and effective services, support and practice on the part of relevant authorities. We will also continue to challenge and/or advise Government in keeping with the legislative remit 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:

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Referral Form - if you need advice, assistance or wish to make a complaint, please use the form on this page www.niccy.org/referralform

Protected Disclosures - NICCY is designated a 'Prescribed Person' under the Public Interest Disclosure (NI) Order 1998 (and subsequent amendments) to whom disclosures can be made by external employees in matters relating to the safeguarding and promotion of the rights and best interests of children and young people.

NICCY is committed to our role as a 'prescribed person'. The 'Order' protects external workers who make 'protected disclosures' / 'blow the whistle' on their employers in such circumstances and these will be treated seriously and investigated accordingly by NICCY, in line with our statutory powers.

You can find out more on our website www.niccy.org

Please contact the Communications team at NICCY if you require alternative formats of this material.