



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

The New Admission Arrangements for Post-Primary Schools – Response of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to comment on the consultation on the proposed new arrangements for admission to post-primary schools. The Commission will not comment on all aspects of the paper, but on those to which we wish draw attention. The Commission would welcome

¹ Northern Ireland Act 1998, (s.69 (1))

² *Ibid*, s.69 (3)

³ *Ibid*, s.69 (4)

⁴ *Ibid*, S.69 (6)

feedback on this response. Where it is decided not to take account of the comments made, the Commission would be grateful for an indication of the reasons for not doing so.

INTRODUCTION

3. The Commission has considered the new admissions arrangements in the context of the internationally accepted rules and principles for the protection of human rights.
4. The Commission's approach is primarily founded on its concern that the new arrangements should respect the right of every person to education, free from any form of discrimination. Education has long been recognised as a fundamental human right, and is defined in several international standards. These include the ECHR (now incorporated into domestic law by the Human Rights Act 1998) where it appears at Article 2, First Protocol, with the seemingly more restrictive formulation, amplified in caselaw, of a right not to be denied education. Other international human rights instruments affirming the right to education include the Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child.
5. The Commission has contributed to the debate on the reform of the Selection System since 2001. It met with the Post-Primary Review Body on two occasions in advance of the production of its consultation report. It produced a submission to the Review in February 2001, and a response to the Report of the Review Body in July 2002. In addition it hosted a seminar on Human Rights and the Report of the Post-Primary Review Body, produced a short guide to human rights and the Review of Post-Primary Education, and met with the Costello Group in July 2004. The Commission considers that the reform of post-primary arrangements raises significant human rights issues.

CHAPTER 2 PRINCIPLES AND OBJECTIVES

Q1: The Department is seeking your views on whether the principles and objectives outlined provide a sound basis on which to develop new admissions arrangements.

Principles

6. The Commission welcomes the principles outlined in Chapter 2, in particular the principle that the new arrangements should be “fair and free from any bias or indirect discrimination against particular groups or individuals”. However the Commission notes the lack of explicit reference to education rights and children’s rights contained in either the principles or the objectives, and is concerned that parental choice appears to have been made the primary consideration. Children in Northern Ireland have the protection of the ECHR, and no reform of the education system can be legislated for without regard to the requirements of the Human Rights Act 1998. These should be made explicit in the principles. The right to education, as defined by the European jurisprudence, belongs to the individual, in this context the child, and the parent’s right to ensure that the child’s education respects the parent’s religious and philosophical convictions is subsidiary in nature.⁵ The child’s right is a right of access to an effective education and Article 14 of the Convention prohibits discrimination in access to Convention rights, including educational rights.
7. In addition children have rights defined by the United Nations Convention on the Rights of the Child (CRC), to which the United Kingdom is party. Notwithstanding the non-justiciability of the treaty in domestic courts, Government has a duty under international law to ensure that its provisions are protected, promoted and fulfilled, and in practical terms this obliges the Department of Education to take a lead in ensuring that all policies are compliant with this Convention. The CRC contains a range of guiding principles including non-discrimination on any ground (Article 2), the best interests of the child (Article 3) and that the child be given the opportunity to express his or her views (Article 12). The right to education is articulated in Article 28, which provides that all State parties recognise the right of the child to education. It also specifies that states should encourage the development of different forms of secondary education, make secondary and (on the basis of capacity) higher education accessible to all, and make educational and vocational guidance available to all children.

⁵ Article 2 of the First Protocol to the European Convention on Human Rights.

8. The Commission suggests that the Department acknowledge two additional principles regarding children's rights and education rights. First, **the Commission recommends that the new arrangements be based upon the child's right to an education.** Second, **the Commission recommends that the process should maximise the opportunity for children to express their views on their education.**

Objectives

9. The Commission broadly welcomes the objectives set out in the consultation document. However the Commission would like to have seen an objective included reflecting the Department's commitment to Targeting Social Need (TSN). Government in Northern Ireland has placed considerable emphasis on the need to tackle inequalities in education. The Department of Education itself published research into the effects of the Selection System in Northern Ireland in September 2000.⁶ This research noted amongst other things the clear link between social disadvantage and lower rates of participation in grammar schools and contributed to the impetus for reform of the selection system. Government has recently published a new consultation on the way forward for TSN which states:

*New TSN is recognised as having been successfully mainstreamed into the planning and implementation of Government programmes and the budgeting process. The recent evaluation however suggests that it lacks a strategic focus and has too many objectives which are concentrated on process as opposed to outcomes. Also New TSN needs to broaden its scope to deal with a wider range of issues linked to poverty and social exclusion, particularly financial exclusion.*⁷

10. The well documented links between the selection system and social disadvantage, and the importance of New TSN as a principle of public policy, would imply the need to include an

⁶ T. Gallagher and A. Smith, *The Effects of the Selective System of Secondary Education in Northern Ireland*, Department of Education, September 2000.

⁷ Office of the First Minister and Deputy First Minister, *New TSN – the way forward: a consultation document*, 2005, p13.

objective on this issue. **The Commission recommends that the new arrangements have the explicit objective of helping the education system to contribute to the equalisation of life chances and reduction of social disadvantage.**

11. The Commission is concerned about the need for underpinning objective 3 which states that "as far as possible admissions criteria should be complementary, so that each child is given some priority under at least one set of admissions criteria in that area". There are limited incentives for schools to make their admissions criteria complementary and there appears to be no independent oversight process envisaged at present to ensure that the criteria of different schools are complementary.
12. **The Commission recommends a review mechanism to ensure complementarity amongst the criteria of different schools, and to ensure criteria are non-discriminatory.**

Q2: The Department is seeking your views on:

(a) whether the Pupil Profile should be used in the way described in the Consultation Document and

(b) whether there are alternative or additional ways in which the Pupil Profile should be used to help parents decide on future post-primary provision for their child.

13. The Commission welcomes the concept of comprehensive and objective pupil profiles. The Commission also supports the emphasis on the sharing of information between parents and schools, which should lead to evidence-based discussions on the child's educational needs. The Commission welcomes the fact that the profile is not to be used in the admissions criteria.

Q3, 4, 5, 6 and 7: (all concerning information to be shared with parents and advice to be given)

14. It will be important for the Department to oversee how schools share information with parents from all backgrounds, including those from socially disadvantaged backgrounds and those with particular communication needs (including parents

whose first language is not English). **The Commission recommends that research be conducted into how schools can share information appropriately across the different social groups in Northern Ireland.**

PUPILS WITH COMPELLING INDIVIDUAL CIRCUMSTANCES OR A STATEMENT OF SPECIAL EDUCATIONAL NEED

Q8: The Department is seeking your views on the types of cases which should be considered as compelling individual circumstances.

15. **The Commission is supportive of the types of cases mentioned in the document but recommends that consideration be given to additional categories.** First, children who have been the victims of bullying, who have received threats of violence or experienced violence may need to be supported to remain in attendance at a particular school, or to move to another school; conversely, children who have bullied or otherwise offended may, after appropriate interventions, need to move to another school. Similar considerations may arise when families are forced to relocate as a result of violence or intimidation.
16. Second, it may sometimes be the case that a child of migrant workers, refugees or asylum seekers has particular needs that can best be met if they attend a particular school: for example, one which has higher-than-average provision for English as an Additional Language, or one that has a particularly good record of achievement in relation to minority ethnic pupils. (Of course every school must be able, willing and equipped to deal with children from migrant and ethnic minority backgrounds.)
17. Third, given the record of the educational system in relation to Traveller children's post-primary participation and outcomes, it may be advisable to give special consideration to Traveller children. Without entering into the debates about the most effective forms of delivery of education for Traveller children, it may be considered a "compelling individual circumstance" if a nomadic Traveller family seeks the admission of their child to a particular school in the area in which they are for the time being resident. Not to provide for

such applications would create an impediment to the traditional nomadic way of life.

Q9: The Department is seeking your views on whether pupils admitted under compelling individual circumstances should be supernumerary to schools' admissions and enrolment numbers.

18. The Commission is of the view that pupils in this category should be supernumerary. Were this approach not taken, it could lead to the pupil's needs being over-ridden by a possibly less compelling criterion that contributed to the prior definition of the particular school's admission or enrolment numbers. Of course, the resources allocated to the school in line with the predetermined numbers would need to be adjusted to take account of any admissions in special circumstances.

Q10: The Department is seeking your views on whether individual Boards of Governors or a Central Panel should consider cases of compelling individual circumstances. If a Central Panel, your views are sought on its size and composition.

19. The Commission is of the view that a central panel should consider cases as this would add a degree of consistency and impartiality into the system. It would also remove an onerous duty of schools which may come under unwelcome pressure in regard to this process. Alternatively, there should be an automatic right of appeal from the determination of a Board of Governors to a central panel. In any event the process should ensure the rights in Article 28 and other relevant provisions of the UN CRC are fully respected: accordingly **the Commission recommends that the panel should have a child advocate with knowledge of children's rights.**

Q11: The Department is seeking your views on whether pupils with statements of special educational need should continue to be admitted as supernumerary.

20. The Commission is of the view that insufficient information has been provided here to make an informed assessment regarding this question. **The Commission recommends that this issue be addressed by an Equality Impact**

Assessment which factors in the likely impact of the Special Educational Needs and Disability (Northern Ireland) Order 2005.

ADMISSIONS CRITERIA FOR OVERSUBSCRIBED SCHOOLS

Q12: The Department is seeking your views on the family-focused criteria listed and their inclusion within a menu.

21. Research on the selection system noted that children from socially disadvantaged areas had lower rates of participation in grammar schools.⁸ This will continue to be the case until the new system commences. It is likely that grammar schools will continue to be oversubscribed in the new system. In the family focused model, siblings of older children at a grammar school when the new system starts will be at an advantage when they apply to that particular school, and similarly children from socially disadvantaged backgrounds – minimally represented in the present grammar school system – will continue be disadvantaged. This differential may be eroded over time but in the first 5-10 years it could affect substantial numbers. Other children who could be disadvantaged by this criterion in the long term include children whose elder sibling did not attend the school of their choice: that is, such a child might be steered in the direction of the school attended by the sibling purely because he or she was more likely to gain admittance.
22. Family focused criteria undoubtedly have a number of practical advantages for the family, for example in terms of transport, holidays, parent-teacher consultation, other family-school interaction, inherited uniforms and so on, especially while more than one sibling is actually attending the school. The school community may also gain in various ways from having a higher level of identification, loyalty and voluntary involvement from the families than would be the case if the family had more than one school relationship.
23. However, there are certain disadvantages in giving a high value to sibling attendance if the matter is considered from the perspective of all those children seeking admission. The case needs to be made as to why applicant child A, who

⁸ See note 6 above.

happens to have a sibling at a school as a consequence of the present selection system, ought to be given an opportunity denied to applicant child B, who may have very similar characteristics except for the fact that his or her siblings were assigned, by the same obsolescent system, to a different school. At least for the next 5-10 year period, all those children not in the position of having a family member at the school could not enjoy an equal opportunity to attend the school of choice.

24. The Commission is therefore concerned that if family focus were given an undue weighting, a substantial number of children will be denied the opportunity to attend the school of choice by the accident of being born to the “wrong” family (one that, for any reason, does not enjoy the “sibling advantage”), or indeed just being the first-born. Given also that almost all families form more than one school relationship over their children’s educational career, and given that it is far from unusual for a family to have children of similar ages in different schools, the Commission considers that the advantages conferred by the family focus are not sufficient to establish that this should be the primary method of determining admissions. **The Commission recommends that family connections with a school should be a consideration in the admissions procedure, but not the determinant.** The Commission also recommends a review after, say, five years, of the equality impact of whatever weighting is given to family connections.

Q13: The Department is seeking your views on the community-based criteria listed, their inclusion within a menu, and how they should be defined.

Q14: The Department is seeking your views on

- a. the geographical criteria listed, their inclusion within a menu and the most appropriate means of operating them; and*
- b. what percentage limit, if any, should be set for places allocated by geographical criteria?*

25. **The Commission recommends that, from a cost perspective, schools should serve geographical catchment areas where possible.** Whilst catchment areas could, in some instances, reflect parish boundaries, these will not give consistent outcomes in terms of area and population,

and are currently used only by the maintained sector. A travel-to-school distance is more objective, but inadequate on its own: whatever the criteria for defining the catchment the over-riding objective must be to ensure an adequate number and mix of primary schools. This might, on occasion, lead to more distant primary schools being brought into a post-primary school's catchment in the interests of equity, while a closer school with particular over-represented characteristics was excluded. Within the defined geographical catchment areas, proximity to school should not be used as a criterion, as it has the potential to lead to 'selection by postcode' so that, within the catchment of a school located in a better-off area, children from less advantaged districts would have less chance of admission.

26. **The Commission recommends that feeder schools not be used if a geographical catchment criterion is applied.** If the feeder school option is retained each school should apply criteria favouring the admission of children from a list of primary schools which includes an equitable representation of schools with a high proportion of children from socially deprived backgrounds. (This could be determined relatively simply, on free meals data.) The percentage of disadvantaged children having access to a particular school ought to be broadly comparable to the level of social disadvantage in the overall catchment area: that is, a post-primary school ought not to work only with feeds from relatively well-off primary schools.
27. **The Commission recommends that geographical catchments should be defined by an independent body, should be reasonably consistent in extent, and should include a fair representation of areas which are defined as socially disadvantaged.** In particular, a school should not be allowed to apply so restrictive a catchment boundary that it can only perpetuate existing socio-economic disparities: it would obviate the rationale for change if the outcome were that schools in the most advantaged locations recruited only from their immediate environs, while schools in less well-off areas had to cast their net far and wide.
28. Of course within these criteria pupils must be able to choose the type of school that is most suitable to them in terms of

denominational, non-denominational, integrated, and Irish-medium education.

Q15: *The Department is seeking your views on*

- a) *the tiebreakers, random selection and proximity from home to school, as a means of admitting pupils down to the last available place*
- b) *the most appropriate method of operating random selection and/or measuring proximity; and*
- c) *whether schools should be free to use different methods of operating random selection or proximity.*

29. **The Commission recommends random selection from within geographical catchment areas, drawn so as to contain a mixed social base, to reduce the likelihood of selection by postcode.** All children within a defined geographical area should have an equal opportunity to attend the school of their choice.

Q16: *The Department is seeking your views on any other criteria that you believe should be included in the menu, bearing in mind the principles and objectives outlined in Chapter 2.*

30. **The Commission recommends the inclusion of a criterion reflecting the Targeting Social Need principle referred to at Question 2 above.**

Q17: *The Department is seeking your views on the possible options for the menu.*

31. **The Commission recommends a School-Centred Catchment criterion and random tie breaks.** These are the criteria that appear most likely to secure a non-discriminatory outcome, and avoid some of the particular drawbacks of the family focused model.

ADMISSIONS APPEALS

Q18: *The Department is seeking your views on whether the process for appealing the decisions of Boards of Governors not to admit a child to the school should be altered in any way.*

32. **The Commission does not see a need to change the appeals process** other than by accommodating a role for the central panel, if created (see Q10).

Q19: Are there any other issues you would like to comment on in relation to new admissions arrangements for post-primary schools?

33. **The Commission recommends that the outcome of the consultation include a clear statement about the consideration given to human rights issues**, including specifically the right to education and the primacy of the rights of the child.

SECTION 75

Q20: Do you think any of the issues contained in the Consultation Document would have any adverse implications for any of the section 75 categories?

34. **The Commission recommends that there should be a full Equality Impact Assessment carried out on the proposals contained in the consultation document.** This process will need to be repeated at intervals and the arrangements adjusted as necessary to counteract negative equality outcomes.

July 2005

**Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast BT1 1NA**

**tel. (028) 9024 3987
fax (028) 9024 7844
e-mail info@nihrc.org
website www.nihrc.org**