

# **Children in Northern Ireland (CiNI)**

## **Response to**

### **The Review of Mental Health and Learning Disability (Northern Ireland)**

### **Human Rights and Equality of Opportunity**

**June 2005**

## **Introduction**

Children in Northern Ireland (CiNI) is the regional umbrella body for the children's sector in Northern Ireland.

CiNI represents the interests of its 90 member organisations, providing policy, information, training and support services to members in their work with and for children and young people.

CiNI welcomes the Review of Mental Health and Learning Disability Northern Ireland. We believe that this current consultation on recommendations on human rights and equality of opportunity across law, policy and provisions affecting people with mental health needs or learning disability is an immensely significant element of the overall Review. CiNI believes that it is the human rights and equality of opportunity standards that are ultimately the key to delivering policy, legislation and practice that can best meet both the rights and needs of people with mental health needs and learning disability.

In responding to this consultation CiNI's primary concern is to ensure that the recommendations on human rights and equality of opportunity do not sit in isolation from the wider Review process. Protection and promotion of international and domestic human rights and equality of opportunity standards for people with mental health needs and learning disability are ultimately the core element of the Review and we welcome the work of the Human Rights and Equality Group in informing the wider Review process by formulating a set of overarching human rights and equality guidelines against which each Working Committee must test their discussions and recommendations.

CiNI also recognises and accepts that in the areas identified in the Review report there are specific human rights and equality of opportunity concerns that are deserving of the Review's particular attention.

We welcome in particular, in line with the Section 75 duty to consult with children and young people, the production of a young person accessible version of this report and would request information on how the Human Rights and Equality Group has directly consulted with children and young people on the report's recommendations and indeed would welcome the analysis from this consultation process.

## **GUIDELINES**

CiNI supports the concept of setting human rights and equality of opportunity guidelines which the report states are "aimed to inform the conduct of **all** the Review's Expert Working Committees and their Sub Groups, and set the context for their work" (p.7). However with reference to the proposed guidelines CiNI's primary concern is that these are not sufficiently anchored to and reflective of existing international and domestic legislative human rights and equality obligations as provided for in the Human Rights Act 1998 and Section 75 of the Northern Ireland Act 1998. CiNI believes that given the significance of these over-arching guidelines for the entire Review process it is imperative that the report explicitly states and demonstrates that the guidelines are underpinned by both Section 75 of the Northern Ireland Act 1998 and the Human Rights Act 1998. In view of the particular vulnerability of children and young people with mental

health needs and learning disability CiNI would also strongly advocate that the guidelines adopt a child rights perspective. We believe that the principles and provisions of the United Nations Convention on the Rights of the Child (UNCRC) should be reflected in the guidelines. We would further highlight that compliance with the principles and provisions of the UNCRC is required of Government given that it has ratified the Convention and thereby committed to compliance with this set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives and also to the implementation of the terms of the Convention by ensuring that law, policy and practice relating to children is in conformity with UNCRC standards.

We would suggest that the lead guideline is that which states - "putting human rights and equality principles at the centre of law, policy and delivery of services for people with a mental health problem or a learning disability is a legislative imperative because of international and domestic law". We would recommend that this guideline should require the "mainstreaming" of human rights and equality principles in law, policy and delivery of services for people with a mental health problem or a learning disability. Equality mainstreaming as defined by the Council of Europe is *"the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated at all levels and at all stages, by the actors normally involved in policy-making"*.

We would advocate that a lead guideline embodying the principle of mainstreaming human rights and equality principles would by its very nature inform and guide the development of all other guidelines and ensure that these principles are central to the performance of all public authorities in carrying out their functions including and going beyond the development and setting of professional codes of conduct and practice.

We note that in making specific reference to equality of opportunity one of the guidelines states - "ensuring equality of opportunity can also mean making structural changes, tackling discrimination and addressing the assumptions and attitudes of others about mental health or learning disability". While we accept that these are elements of ensuring equality of opportunity we believe that as an over-arching guideline this statement does not effectively capture the essence of equality of opportunity as provided for by Section 75 of the Northern Ireland Act 1998. The statutory duty to promote equality of opportunity has moved the parameters beyond simply tackling discrimination and encompasses a positive duty on public sector bodies to have due regard to promoting equality of opportunity and regard to promoting good relations, which includes as a core element ensuring that the views of affected groups are taken into account. We believe that it is this statutory duty to promote equality of opportunity which fundamentally requires the inclusion of the views of people with mental health problems and learning disability which should underpin and be reflected within the over-arching guidelines. Leading from this CiNI would recommend that as the Review has been commissioned by DHSSPS, and recognising that the recommendations will ultimately be advanced by Government, all of the Review recommendations must be subject to Section 75 equality screening and impact assessment.

With Section 75 firmly underpinning the guidelines this would ensure that equality of opportunity is not addressed in a minimalist manner, but rather embraces a holistic approach so that it is not, as indicated by one of the proposed guidelines, only health and social care bodies who must uphold human rights and equality duties in performing their functions, but with a view to both the Human Rights Act 1998 and Section 75 of the

Northern Ireland Act 1998, **all** public sector bodies must uphold human rights and equality principles when performing their functions with regard to people with mental health problems or learning disability.

CiNI believes that given the proposed aim of the guidelines is “to inform the conduct of **all** the Review’s Expert Working Committees and their Sub Groups, and set the context for their work”, these guidelines should be set at an appropriate strategic and over-arching level. A number of the report’s proposed guidelines are recognised by the report itself as being quite specific in nature and we would suggest that these could be more appropriately framed as specific actions flowing from recommendations made on areas of concern. For example the guideline requiring “adequate resources to be put in place to assist recovery” while important in its own right as a specific action area, we would highlight that when taken out of the context from which it has emerged its significance is difficult to assess in terms of deciding whether or not it should have the status of an over-arching guideline. We would recommend that at an over-arching strategic level it would be more appropriate to set a guideline requiring that the implementation of all recommendations of the Review should be adequately and appropriately resourced, and asserting that lack of resources must not be cited as justification for failure to implement human rights and equality.

Throughout the review report, where appropriate, recognition and consideration is given to the multiple identities of people with mental health problems and learning disability which it is accepted can increase their vulnerability and experience of disadvantage and marginalisation. CiNI believes that this is a significant theme of the report and should therefore be elevated to the status of a guiding principle so that all of the Review’s recommendations are developed with consideration given to the issue of multiple identity and where appropriate additional recommendations should be made to address experiences of particular vulnerability and marginalisation. In particular CiNI believes that the report should include specific child focused recommendations in recognition of the failure of mental health and learning disability legislation, policy, and provision to meet recognised human rights and equality standards for children and young people with mental health needs and learning disability. We would strongly urge that all of the fundamental issues considered in the detailed papers provided in the annexes to the report, which have informed the work of the Human Rights and Equality Group must be comprehensively addressed as part of an overall implementation action plan.

## **ACCESS TO RIGHTS**

CiNI supports the report’s recommendations aimed at enabling people with mental health difficulties and learning disability to access their rights. However we believe that the report should explicitly highlight that in compliance with Section 75 of the Northern Ireland Act it is the duty of public authorities to promote equality of opportunity, that is, there is a positive duty on public authorities to ensure that people with a mental health difficulty or learning disability have the same opportunity as the population in general to access their rights to public services. This requires public authorities to ensure that information on public services is produced in accessible formats and fundamentally requires that public authorities are enabled through appropriate training to consult directly with people with a mental health difficulty or learning disability on issues that will affect their lives.

## **THE RIGHT TO VOTE, TO FOUND A FAMILY AND TO LIFE**

CiNI would strongly support the report's recommendation that the continued use of common law in current electoral practice should be reviewed. We would highlight that young people with mental health problems or a learning disability are doubly discriminated against in relation to their entitlement to vote due to their age and the continued existence of the common law concept of incapacity. CiNI would advocate that both these issues which discriminate against young people should be reviewed.

## **EDUCATION RIGHTS**

CiNI supports the report's education recommendation – “the right of every child and young person with a mental health problem or learning disability to education should be explicitly recognised and reflected in any new legislative framework”.

CiNI would emphasise that this right to education applies equally to those children deprived of their liberty under mental health legislation and is particularly significant for these children given that concerns have been identified regarding the appropriateness of the education provision available for them (NICCY, Children's Rights in NI, 2004). CiNI would support the recommendation of the NICCY report that the framing of an individualised education plan should be made mandatory within the context of the care plan.

## **CAPACITY, INCAPACITY AND HUMAN RIGHTS**

CiNI notes the concerns which exist in relation to capacity, incapacity and human rights as detailed in Annex 5 of the report. We would advocate strongly that law, policy and practice governing medical treatment must be brought into line with the requirements of the Human Rights Act 1998 and the United Nations Mental Health Care Principles.

We would support the recommendation for new mental capacity legislation for Northern Ireland which complies with international human rights and equality standards and is also reflective of best practice in UK legislation, with a view in particular to the Mental Capacity Act 2005. Given that current legislation affords people with mental disorder in Northern Ireland with lesser protection than that afforded to their counterparts in GB we would highlight that the need for new mental capacity legislation should be addressed as a matter of urgency.

## **INVOLUNTARY DETENTION**

CiNI notes the comprehensive statement addressing the detention of a child in the context of mental ill-health legislative requirements provided at Annex 7. Again we would advocate strongly that alongside the overall recommendations of this report the specific issues identified in annexes relating to those groups that are particularly vulnerable should be addressed in their own right as an important element of ensuring that the review informs the development of legislation, policy and provision that meets the rights and needs of all those with mental health problems and learning disability.

CiNI notes the report's recommendation in relation to children and young people who are compulsorily detained under mental health legislation – “Given the previous under-funding of services for children and young people, there must be adequate resources

made available to protect the rights, needs and best interests of compulsorily detained children and young people, including their educational needs and rights”.

CiNI would advocate that as a first step the report should recommend the incorporation in particular of Article 3 of the UNCRC, the “best interests” principle, into mental health legislation. Indeed the detention of children under mental health legislation should be assessed against all of the general principles and relevant provisions of the UNCRC including the principle of non-discrimination (Article 2), the right of the child to be heard and to participate in decision making processes affecting their lives (Article 12) and the right of the child to education (Article 28 and 29).

We note that the report observes that resource allocation has been used in an attempt to justify failure to meet the rights of children and in particular the educational rights and needs of children detained under mental health legislation. We would highlight that failure to allocate adequate resources is in contravention to Article 4 of the UNCRC which requires that in seeking to implement the Convention rights Government shall undertake the required measures to the “maximum extent of available resources”. Therefore we strongly support the report’s recommendation that adequate resources are made available to meet the rights of children and young people under the Convention.

## **REPRESENTATION AT MENTAL HEALTH REVIEW TRIBUNALS**

CiNI would support and endorse the Review’s conclusions and recommendations on representation at Mental Health Tribunals.

Given the significance of what is at stake at Mental Health Tribunals, that is, patients right to liberty, we recognise that patients could be extremely vulnerable before such Tribunals if they are properly represented. In particular, taking account of the multiple identities of children and young people and their vulnerability both in terms of their age and mental health needs and learning disability we would strongly urge that active consideration be given dual or tandem representation of children, whereby a lawyer and Guardian ad Litem would be appointed to act for the child to represent the child’s rights and interests.

## **ADVOCACY**

CiNI wishes to acknowledge the comprehensive advocacy paper (Annex 9) which informed the development of the report’s recommendations on advocacy provision for people with mental health problems and learning disability.

However we would advocate that as part of the report’s overall recommendations on advocacy that specific recommendations are also made to address the advocacy rights and needs of multiple identity groups including children and young people with mental health needs and learning disability. CiNI would strongly recommend that advocacy measures are introduced similar to those which exist under the Quality Protects programme, and which embrace both a legislative and policy basis for the development of a robust advocacy network across Northern Ireland that builds on and extends the good practice which currently exists in advocacy service provision.

In terms of the issues to be addressed while we accept that the absence of a funded, co-ordinated advocacy strategy for Northern Ireland must be addressed as a matter of

urgency, we would also urge caution and indicate that such a strategy should not sit outside of, for example, regional strategic policy development for children and young people. We would strongly recommend that any advocacy strategy must be effectively mainstreamed within the forthcoming Children and Young People's Strategy and actioned through the over-arching Children and Young People's Action Plan drawing on the DHSSPS Strategic Framework for Children, Young People and Families. In this way advocacy provision would be subject to monitoring and review by a Strategy Review Panel which is to include membership from across all key sectors including the voluntary and community sector.

In developing an advocacy strategy we would highlight that it is imperative that children and young people are actively engaged in the process in compliance with the Section 75 duty to promote equality of opportunity which requires direct consultation with children and young people on policy which will have an effect on their lives.

CiNI supports the key elements identified as being central to the development of a successful model for child advocates in the field of mental health and learning disability (p.153); however clearly no one model fits all and the important consideration will be that any model(s) which are developed have core agreed elements. In particular CiNI would highlight that advocacy services provided by the voluntary sector must be recognised as significant models of advocacy provision for children in care, and therefore must be included and supported as part of any regional advocacy strategy and network. CiNI would highlight that voluntary agencies have an agreed and defined role to advocate in response to the needs of those with whom they work which is provided for in the 'Compact' agreed between Government and the Voluntary and Community Sector in Northern Ireland (DHSS, 1998). Therefore voluntary sector advocacy services must be recognised and adequately resourced as part of any regional advocacy network.

CiNI would also highlight that the current roll out and implementation of the recommendations from the Review of Public Administration in Northern Ireland will bring significant and necessary structural changes to the organisation of public services in Northern Ireland. This change process and the establishment of new organisational structures will inevitably necessitate the development of new working relationships between public service providers and service users and those who advocate on their behalf. CiNI believes that the RPA process brings added impetus to the need for robust advocacy services for vulnerable groups including children and young people to ensure that their views on the process are heard and addressed, and their rights and needs are protected and promoted during the transition period and while new working arrangements become established.

## **IMPLEMENTATION, MONITORING AND REVIEW**

CiNI also believes that the Human Rights and Equality Group should look ahead toward implementation of the recommendations of its report and should include a specific recommendation requiring the development of a Mental Health and Learning Disability Review Action Plan with implementation of the Action Plan overseen by an implementation steering group chaired by the Minister for Health, Social Services and Public Safety who is ultimately accountable for the Review. An implementation steering group must be supported by comprehensive terms of reference which clearly define a role for the group in monitoring and reporting on implementation of the

recommendations. This group must ensure the active representation and involvement of user and carer representatives as well as the voluntary and community sector.

## **CONCLUSION**

In conclusion CiNI trusts that the issues that we have raised can inform the final recommendations of the Human Rights and Equality Group and would reiterate our key message that these recommendations must be firmly anchored in both international and domestic human rights and equality principles and as such form a framework against which all of the recommendations of the Review process can be assessed to ensure that mental health and learning disability law, policy and provision can deliver on the rights and needs of all those with mental health difficulties and learning disability.