

**QUESTIONNAIRE ON COAC REPORT FOR SEPARATE
REPRESENTATION FOR CHILDREN IN PRIVATE LAW
PROCEEDINGS**

Name: __Children in Northern Ireland

Address: _Unit 9, 40 Montgomery Road, Belfast, BT6 9HL

Are you responding as:

- An Individual
- On behalf of a group or organisation

For the purposes of analysing responses it would be helpful if respondents indicated the capacity in which they were completing the questionnaire. Please tick as appropriate:

- Legal sector
 - Judiciary
 - Health and Social Services sector
 - Advice sector
 - Voluntary sector
 - Academic sector
 - Political sector
 - Statutory body
 - Government body
 - Individual
 - Other (please specify)
-

Do you agree to your response being made public?

- Yes
- No
- Partly (please specify)*

Are you content for the Children Order Advisory Committee to contact you again in the future for consultation purposes?

- Yes
- No

Children in Northern Ireland welcomes this opportunity to respond to the Report of the Separate Representation Sub-Group of COAC. Children in Northern Ireland is represented on the Sub-Group by the Children's Law Centre. CiNI would like to express its gratitude to Ms Tara Caul (Children's Law Centre) for providing committed and exemplary representation.

The Committee asks for your comments on the following matters:

1. Should children in private law proceedings have the same automatic party status afforded to children who are the subject of public law applications?

CiNI acknowledges that the provision in public law of representation by a lawyer and Guardian ad Litem is founded on a recognition that the interests of parents and children may be in conflict.

However, while we also acknowledge and endorse the proposition noted in the Report that "parents are uniquely placed to promote the interests of their children" we would also agree that in private law cases there will be also be instances where conflict between parents will prevent them for promoting and safeguarding the rights of their children. Therefore there is a need for an independent and separate mechanism that promotes and safeguards the rights and welfare of children.

CiNI would agree with the analysis provided in the report that "separate representation overcomes the perceived disadvantage caused by the lack of party status for children involved in private law proceedings under the Children Order. Separate representation affords the child a legal status in the proceedings. This status recognises that the child's interests may not coincide with his parents, either as individuals – in contested applications-, or even jointly in uncontested cases. Separate representation of the child as a party to the proceedings is therefore an attempt to make the object of the application into a legal subject with procedural rights" (p.16 para 5).

CiNI would therefore strongly advocate for separate representation as a means of affording children party status in private law proceedings.

2. Do you agree with the view of the committee that there is no legal obligation or other imperative placed upon this jurisdiction to provide separate representation for every child who is the subject of private law proceedings under the Children (Northern Ireland) Order 1995?

As a signatory to the UNCRC the UK Government has committed to compliance with the Convention's non-negotiable and legally binding minimum standards and

obligations in respect of all aspects of children's lives and has committed to the implementation of the terms of the Convention by ensuring that United Kingdom law, policy and practice relating to children is in conformity with UNCRC standards.

In relation to separate representation Article 12 of the UNCRC is particularly relevant and significant. As noted in the Report it "requires that public and private law proceedings should be considered together when considering what opportunities are provided to children to be heard" (p.24 para 10).

CiNI would highlight that in 2002 the UN Committee on the Rights of the Child in reporting on Great Britain and NI's implementation of the Convention expressed concern that the obligations of Article 12 had not been consistently incorporated in legislation and made specific reference to private law proceedings, recommending that the UK Government take further steps to consistently reflect the obligations of both paragraphs of Article 12 in legislation, and that legislation governing court and administrative proceedings ensure that a child capable of forming his/her own views has a right to express those views and have them given due weight (CRC/C/15/Add.188, para 30)

The lack of separate representation in private law proceedings was identified by NGOs and legal professionals as being amongst the most pressing children's rights concerns in research commissioned by NICCY and conducted by QUB on Children's Rights in NI (NICCY, 2004). The research highlighted the concern as a key priority which NICCY should raise with those with statutory responsibility for the area.

We believe that it is not sufficient to rely on the ad-hoc provision of a Guardian ad Litem in private law proceedings due to the fact that the Guardian ad Litem's role is to represent the child's interests, which in all cases will not necessarily be the child's views. Furthermore the need for the appointment of a Guardian ad Litem must be demonstrated in each case and is entirely at the discretion of the court. Neither is it sufficient to rely on the rule making power in the Children Order regardless of the fact that this power has been used to make rules regarding separate representation in the County and High Courts.

CiNI would advocate strongly for implementation of the UN Committee's recommendation through the provision of a legislative basis for separate representation for children in private family law cases. We would advocate that the most effective mechanism to enable this provision would be through an amendment to the Children Order similar to the amendment of the Children Act introduced by the Adoption and Children Act 2002 which would effectively expand the definition of specified proceedings to include Article 8 (private law) proceedings. In line with the Report's recommendation the amendment should expressly state that the child enjoys the same access to separate representation in the Family Proceedings Courts as he or she currently enjoys in the County Court or High Court. The supporting Magistrates Courts (Children (NI) Order 1995) Rules (NI) 1996 should likewise be amended to extend the discretionary power enjoyed by the County Court and High Court to grant representation for a child to all courts in the concurrent system. In addition to this, we recommend the commencement of Article 36 of the Family Homes and Domestic Violence (NI) Order 1998, which allows for the Lord Chancellor to make regulations providing for the separate representation of children in proceedings relating to any question arising under this Order.

3. What criteria, if any, should the court apply to the determination of an application for separate representation of a child in private law proceedings?

CiNI believes that the development of criteria to determine an application for separate representation is essential given that the Report has identified that the grant of separate representation to children is not consistently applied by the courts (p.38 para 6). We would support the development of appropriate criteria in the interest of achieving greater clarity, transparency and consistency in the granting of such applications by the courts.

However we are not of the view that separate legal representation is needed in all private family law cases. We would share the view expressed by the Children's Law Centre that in many cases family mediation which involves the child will be more appropriate.

CiNI supports the Report's recommendation that the Children Order Advisory Committee request the Best Practice Working Group to produce guidance on the criteria (p.40 para 12). Furthermore in line with the Report's recommendation the Best Practice Working Group should be informed by the criteria set by the Family Court of Australia in **Re K** (p.41, para 21). We would also suggest that additional criteria are needed in relation to domestic violence which is witnessed by children and in relation to intractable disputes concerning a child's education. The refusal of separate representation should be open to appeal.

4. Please specify your preferred type of representation for children in private law proceedings?

a. Representation by a social worker

b. Tandem representation by a social worker (e.g. a guardian ad litem) and a lawyer

c. Other form of representation (please specify below)

In deciding on a preferred type of representation for children in private law proceedings we believe that paramount consideration should be given to the model of separate representation that can best represent the child's interests and promote and safeguard the child's welfare thereby enabling the court to reach a proper decision. For this reason we welcome and believe it would be important to gather the views of children and their parents on the options that are being consulted on at present.

CiNI would support the analysis provided in the Report and would agree that the most appropriate model is that of tandem representation by a social worker (guardian ad litem) and a lawyer. We note the Report's view that there are issues in private law cases including competence; expert assessment and referral to family support services which would be better addressed by a combination of legal and social work expertise (p.39, para 7).

However we do note that this model is not operable under current legislation as there is no automatic provision allowing the involvement of a guardian ad litem. We would endorse the view provided by the Report that the present legislative restriction on the appointment of Guardian ad Litem in private law cases should be removed (p.40 para. 17).

CiNI would advocate that the new model is piloted initially and its operation monitored and reviewed either by the Sub-committee or an alternative mechanism that is representative of the cross-section of interests involved in the process. The monitoring and review process must include gathering the views of children and parents.

5. Do you agree with the committee's recommendation that the dedicated Court Welfare Officer scheme should be extended to all Family Proceedings Courts?

CiNI believes that it is entirely sensible and appropriate for Trusts to provide dedicated Court Welfare Officer posts, particularly as an acknowledgement of the burden that has been placed on social workers with responsibility for preparing court welfare reports as well as dealing with heavy child protection workloads, and as an effort to address the problem. We would support the view provided by the Report that it is a model of appropriate rationalisation of scarce resources (p.40, para. 15).

CiNI would strongly support the roll-out of the scheme to all Family Proceedings Courts as expediently as possible.

6. Do you accept the Committee's suggestion that it would be beneficial to have a protocol defining the remit of Court Welfare Officers and describing their powers and duties?

CiNI agrees that it would be beneficial to have a protocol defining the remit of Court Welfare Officers and describing their powers and duties as this would ensure coherence and consistency in the provision of the service, particularly in light of the recommendation to roll-out the Court Welfare Officer scheme to all Family Proceedings Courts. We also agree with the recommendation that it is essential to the development of the service that the status of Court Welfare Officers be reinforced and that a uniform programme of multi-disciplinary training and professional development is established (p.40, para. 16). We would also highlight that the post of Court Welfare Officer should be set at an appropriate professional level so that staff have appropriate knowledge and experience to deal with the work. We make this point noting that the Report observes that court welfare reports are often prepared by young and inexperienced staff who cannot reasonably be expected to provide the quality of service required.

7. How should the provision of representation for children in private law proceedings be funded?

CiNI notes that the report highlights that the tandem model, which we have indicated as our preferred model of representation, is likely to deliver the best outcome for children, and has been designed to avoid expense as it is based on an efficient and effective partnership between the solicitor and Guardian ad Litem (p.21 para 35).

CiNI would agree with the Report observation that the chosen scheme would need to be subject to a cost effectiveness analysis following the same standard that is applied in cost analysis of representation in public law proceedings (p. 20, para. 27)

8. Please identify any suggestions you have about how the views of children and their parents about the issue of separate representation can be ascertained?

CiNI welcomes all efforts to ascertain the views of children and their parents on the issue of separate representation. We would highlight that such consultation with those who will be directly affected by any change to the arrangements is in line with the DHSSPS and NI Court Service Section 75 duty to promote equality of opportunity. Therefore we would recommend that a child friendly version of this consultation and questionnaire is produced for children and young people.

In addition CiNI would ask for information on plans to subject the consultation proposals to the Section 75 Screening process for the purposes of determining whether or not a full Equality Impact Assessment is required.

The English research referred to in the Report is informative particularly with regard to the consideration its gives to children's wishes and feelings and equivalent research in Northern Ireland would be useful. Clearly this research could be informed by statistical information gathered by the NI Court Service, and therefore we would support the Report's recommendation that the NI Court Service gather a range of quantitative information relating to private law cases. Clearly such research should also include qualitative data from children and their parents on their experience of separate representation or the lack of separate representation.

Paper responses should be forwarded to:

Children Order Advisory Committee Secretariat

C/o Child Care Policy Directorate
DHSSPS
Room D1.4
Castle Buildings
Stormont
Belfast
BT4 3SQ

or

c/o Business Support Group
NI Court Service
3rd Floor
Bedford House
Bedford Street
Belfast
BT2 7DS

Alternatively, you can email your completed questionnaire to:

informationcentre@courtsni.gov.uk