

Ombudsman for Children

Submission to the Forum on Patronage and
Pluralism in the Primary Sector

August 2011

Content

1. Ombudsman for Children's Office (OCO)
2. Engagement with the Forum on Patronage and Pluralism
3. Children's Rights: Ireland's international Obligations
 - UN Convention on the Rights of the Child
 - Aims of education
 - Right to freedom of thought, conscience and religion
 - General Principles of the UNCRC
 - Additional UNCRC rights of relevance
4. Conclusion

1. Ombudsman for Children's Office (OCO)

Following a resolution of both houses of the Oireachtas, Emily Logan was appointed Ombudsman for Children by President Mary McAleese in December 2003 and reappointed for a second term in December 2009. Established under the Ombudsman for Children Act 2002, the Ombudsman for Children's Office (OCO) is an independent statutory body and the Ombudsman for Children's accountability is to the Oireachtas. Internationally, under the Paris Principles, the OCO is a specialised national human rights institution for children.

The Ombudsman for Children's core statutory functions include the traditional ombuds-role to investigate complaints in relation to the actions of public bodies that have or may have adversely affected a child or group of children. In carrying out this function, the OCO is required by the 2002 Act to be both independent and impartial. In addition to investigating complaints made by or on behalf of children, the Ombudsman for Children can initiate investigations of her own volition. In the context of investigating complaints, the Office must have regard to the best interests of the child and is obliged to give consideration to the wishes of a child in so far as is practicable and in accordance with the age and understanding of the child.

In addition to its role to investigate complaints, the OCO has a broad and versatile statutory remit to promote the rights and welfare of children, without prejudice. Provided for under Section 7 of the 2002 Act, the Office's obligations in this regard include:

- encouraging public bodies to develop policies, practices and procedures that promote children's rights;
- giving advice at Ministerial level on legislative and public policy developments relating to the rights and welfare of children;
- consulting with children and highlighting issues relating to their rights and welfare that are of concern to children themselves; *and*
- raising awareness of matters relating to the rights and welfare of children, including the principles and provisions of the UN Convention on the Rights of the Child.

2. Engagement with the Forum on Patronage and Pluralism

In April 2011, the Minister for Education and Skills launched the Forum on Patronage and Pluralism in the Primary Sector and announced the appointment of Professor John Coolahan (Chair), Dr. Caroline Hussey and Ms. Fionnuala Kilfeather as members of the independent Advisory Group to the Forum.

Among the matters raised by the Ombudsman for Children with the Minister for Education and Skills, Mr. Ruairí Quinn TD, during a meeting in May 2011 was the complementary contribution that the OCO might make to the work of the Forum. In a letter to Professor Coolahan in June 2011, the Ombudsman for Children proposed that one of the ways in which her Office could support the work of the Forum would be to advise on Ireland's international children's rights obligations in this area. As the Ombudsman for Children indicated during her subsequent meeting with members of the Advisory Group in July 2011, while the issue of parental choice is clearly a central consideration for and has been the focus of many submissions to the Forum, it is equally important to bear in mind the children's rights dimension and the direct effect that any changes arising from the work of the Forum will have on children. Accordingly, the Ombudsman for Children welcomed the initial opportunity provided by this meeting to draw attention to a number of Ireland's international obligations in relation to children's rights. This paper elaborates briefly on these obligations so that consideration of them may inform the Advisory Group's deliberations. In doing so, this paper makes particular reference to relevant principles and provisions of the UN Convention on the Rights of the Child (UNCRC).

3. Children's Rights: Ireland's international Obligations

Currently in Ireland, 96% of primary schools are under denominational patronage. As the Minister for Education acknowledged at the launch of the Forum in April and members of the Forum's Advisory Group are aware, several international monitoring mechanisms have expressed concern at the very limited provision for non-denominational and multi-denominational primary schools in Ireland:

- In its concluding observations of 2006 in respect of Ireland's second periodic report on implementation of the UNCRC, the UN Committee on the Rights of the Child encouraged the State to take fully into consideration recommendations made by the UN Committee on the Elimination of Racial Discrimination in 2005 to promote "the establishment of non-denominational and multi-denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions."¹
- In its concluding observations of 2008 in respect of Ireland's third periodic report on implementation of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee recommended that "the State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party."²
- Recalling its concluding observations of 2005, the UN Committee on the Elimination of Racial Discrimination in 2011 noted with regard to Ireland's combined third and fourth periodic reports its concern that "the education system in the State party is still largely denominational" and recommended that "the State party accelerate its efforts to establish alternative denominational or multi-denominational schools and to amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief." The Committee also recommended that "the State party encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination on the basis of belief."³

As the Ombudsman for Children indicated during her meeting with members of the Forum's Advisory Group in July, it is anticipated that these concerns may be raised again at international level, initially by the UN's Human Rights Council on 6th October 2011 in the context of its forthcoming Universal Periodic Review of Ireland and subsequently by the UN Committee on the Rights of the Child in 2012/2013 as part of its

¹ CRC/C/IRL/CO/2, para.61.

² CCPR/C/IRL/CO/3, para. 22.

³ CERD/C/IRL/CO/3-4, para.26.

examination of Ireland's progress towards implementing its obligations under the UNCRC since 2006.

At this meeting, the Ombudsman for Children also noted that concerns and complaints have been brought to the OCO, which are relevant to the issues being considered by the Forum. Viewed in the context of the overall number of complaints the Office handles in relation to education and schools (38% of all complaints we received in 2010 concerned education), these complaints are few in number and, as such, it would be inappropriate to make any general comments on the basis of them. However, what they do underscore is that policies, procedures and practices in this area do have practical implications for children. Principal among the issues raised through these complaints to date are:

- School ethos – Parents have expressed concern that the religious ethos of their child's school is too pervasive or, alternatively, that it is not being adequately adhered to due to insufficient time being given to the preparation of children for the sacraments.
- Supervision – Concerns have been raised about supervision for children who opt out of religious education and, with them, the issue of managing the practical implications of providing an opt out for children in a manner that is consistent with their rights, welfare and best interests.
- Establishment of schools – Concerns have been brought to the OCO's attention in relation to difficulties experienced in setting up and getting approval for new schools.
- School transport – Complaints have consistently been made to the OCO in relation to the issue of school transport provision. Among the issues these complaints have highlighted is how one area of policy within education can impact on another and do so in ways that may inhibit parental choice.

UN Convention on the Rights of the Child

Ireland ratified the UNCRC in 1992 and the State has corresponding obligations under international law to uphold the Convention's principles and provisions. Taken together, these principles and provisions provide the most comprehensive delineation of children's rights available to us. As such, and in accordance with provisions of the 2002 Act, the Ombudsman for Children encourages the UNCRC's use as a key reference point for

those involved in legislative and public policy developments that affect children and that therefore need to be underpinned by proper recognition and respect for children's rights.

Aims of education

Providing an holistic and far-reaching vision of education, the aims of education as set out in Article 29 of the UNCRC can usefully inform the deliberations of the Forum on Patronage and Pluralism. The five broad aims are:

- the development of the child's personality, talents and abilities to their fullest potential;
- the development of respect for human rights and fundamental freedoms;
- the development of the child's sense of identity and affiliation and respect for difference;
- the child's preparation for a responsible life, in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- the development of respect for the natural environment.

In upholding the liberty of individuals and bodies to establish and direct educational institutions, Article 29(2) states that such liberty must be "subject always" to the observance of the principles set out in 29(1).

As the UN Committee on the Rights of the Child noted in its 2001 General Comment on the aims of education, Article 29 conceives of education as a means of protecting, promoting and supporting the "human dignity innate in every child" and the "realisation of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities."⁴ In addition, Article 29 stresses "the need for education to be child-centred, child-friendly and empowering"⁵ and "for a balanced approach to education ...which succeeds in reconciling diverse values through dialogue and respect for difference."⁶

⁴ CRC/GC/2001/1, para.1.

⁵ Ibid, para. 2.

⁶ Ibid, para.4.

Against the backdrop of this vision of education, it is notable that the UN Committee has become increasingly concerned about the issue of ensuring freedom of religion in the context of compulsory education. Expressed in the context of examining other States' implementation of the UNCRC, the Committee's concerns include:

- lack of or inadequate provision for the rights of children belonging to religious minorities in contexts where classes in one particular religion are part of the formal curriculum;
- inadequate provision *in practice* for alternative classes in schools where religious education is not compulsory or there are arrangements for exemption.

Right to freedom of thought, conscience and religion

Article 14 of the UNCRC provides that States must “respect the right of the child to freedom of thought, conscience and religion”. Article 14(2) provides that States must “respect the rights and duties of parents to provide direction to the child in the exercise of his or her right [to freedom of thought, conscience and religion] in a manner consistent with the evolving capacities of the child.” Underpinned by a recognition of children as having “evolving capacities”, Article 14(2) can be seen to promote an approach to upholding children's right to freedom of thought, conscience and religion that is at once child-centred and respectful of the rights and duties of parents. Article 14(2) echoes Article 5 of the UNCRC in this regard, which offers a broad definition of the State's obligation to respect the “responsibilities, rights and duties” of parents and of parents' role to provide, “in a manner consistent with the evolving capacities of the child”, appropriate direction and guidance to their children in the exercise of their rights.

Additional points worth bearing in mind in respect of Article 14 of the UNCRC are:

- The child's right to freedom of religion is conceived as an absolute right. The child's right to manifest his or her religion or beliefs can be subject to very limited restrictions. Such limitations must be prescribed by law and be “necessary to protect public safety, order, health or moral, or the fundamental rights and freedom of others” (14(3)).
- The terms “religion” and “beliefs” are to be broadly construed, protecting theistic, non-theistic and atheistic beliefs as well as the right not to profess any religion or belief.

General Principles of the UNCRC

In the context of considering children's right to freedom of thought, conscience and religion, it is important to take into account the general principles of the UNCRC. In addition to being substantive rights, these principles are procedural rights, which are recognised as being pivotal to securing and protecting children's other rights as set out in the Convention:

- **Non-discrimination** – Article 2 of the UNCRC requires ratifying States to respect and ensure the rights set out in the Convention to each child in their jurisdiction “without discrimination of any kind” and irrespective of, *inter alia*, the child's or his/her parents' religion. Paragraph 2 of Article 2 goes on to stipulate that States must take all appropriate measures to ensure that children are protected against all forms of discrimination or punishment on the basis of, *inter alia*, the expressed opinions or beliefs of their parents, legal guardians or family members.
- **Best interests of the child** – Article 3 of the UNCRC states that the best interests of the child must be “a primary consideration” in *all* actions concerning children undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. The best interests principle is a procedural rule that aims to facilitate an examination of the interests of children. This principle is not for use as a trump card, but rather as a means of doing away with a blind spot and redressing an imbalance: Article 3(1) emphasises that governments, administrative bodies and others must ascertain the impact on children of their actions with a view to ensuring that the child's best interests are a primary consideration, that proper priority is given to children, and that actions and decisions affecting children are consistent with children's rights and welfare.
- **The right to be heard** – Article 12 of the UNCRC provides that children who are capable of forming their own views have the right to express those views freely in “all matters” affecting them and to have due weight given to their views in accordance with their age and maturity. Article 12 is pivotal to the UNCRC's promotion of children as individual rights-holders and as having an active role to play in identifying their best interests and progressing the realisation of their rights. The Ombudsman for Children welcomes plans to facilitate children to

contribute their views to the work of the Forum on Patronage and Pluralism; in addition to enabling children to actively participate at an early stage in an important development affecting them, this initial consultation with children can provide a foundation for their future participation in subsequent stages of this change process. With this in mind, it may be worth recalling that Article 12 does not prescribe a minimum age at which children should be entitled to express their views, but focuses instead on the child's capacity to form a view. Similarly, no restrictions are placed on the issues that children have a right to express their views on: Article 12 speaks of "all matters" affecting children, where these include the matter of children's right to freedom of thought, conscience and religion and its consideration in the context of "administrative proceedings" concerning children. Finally, it is important to bear in mind that children not only have the right to be heard, but to have their views taken seriously: the reference to "due weight" in Article 12 establishes an obligation to give appropriate and respectful consideration to children's views in accordance with their age and maturity.

Additional UNCRC rights of relevance

In addition to considering children's right to freedom of thought, conscience and religion and how this might be upheld in a manner that is consistent with the three general principles referred to above, members of the Advisory Group might also keep in mind a number of other UNCRC rights in the context of their deliberations. Briefly, these include:

- **Article 13** - The right to freedom of expression provided for in Article 13 includes the right to seek, receive and impart information and ideas of all kinds and through any media of the child's choice. In terms of the Forum and the change process being initiated through it, respect for this right will entail ensuring that, in addition to parents and other relevant stakeholders, children participating in and/or affected by the work of the Forum and the subsequent change process receive accessible information in relation to developments.
- **Article 16** – The UNCRC states that children must not be subjected to any arbitrary or unlawful interference with their right to privacy. In the context of the Forum's deliberations, one issue that the Advisory Group might consider is how

changes brought about in respect of patronage and pluralism in the primary sector will uphold children's right not to reveal their religion and/or beliefs to others.

- **Article 19** – The UNCRC includes a number of rights relating to the protection of children from harm. Article 19 requires States to take all appropriate measures to protect children from all forms of violence, injury, abuse, neglect and maltreatment. It will be essential that in the context of identifying, piloting, mainstreaming and evaluating policies, procedures and practices to improve provision for pluralism and diversity within and between primary schools, full consideration is given to ensuring that all measures are consistent with best child protection practice.
- **Article 30** – Relating to the rights of children belonging to minority or indigenous groups, Article 30 of the UNCRC provides that children belonging to such groups must not be “denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. Together with Article 2 of the UNCRC, this provision underscores the importance of ensuring that appropriate provision is made within schools and formal education for respecting the right to freedom of thought, conscience and religion of children belonging to minorities.

4. Conclusion

Making adequate and appropriate provision for pluralism in primary schools is an important issue for the formal education system in Ireland, not least in light of the increased ethnic, cultural and religious diversity of Ireland's population in recent years. The Ombudsman for Children welcomes the initiative taken by the Minister for Education and Skills to address this issue by establishing the Forum on Patronage and Pluralism and appreciates that the challenge of identifying practical solutions that will be acceptable to all stakeholders is not inconsiderable.

The OCO's experience to date indicates that the most efficient and effective way to resolve many concerns and complaints regarding the adverse effect on children of

decisions and actions taken within schools is at local level. However, while the OCO actively promotes local resolution of complaints, the Office's experience suggests that competency among patrons and boards of management to handle complaints appropriately needs to be developed. Implementation of the change process being instituted by the work of the Forum on Patronage and Pluralism will ultimately occur and be most keenly felt at local level in individual schools and communities. It is vital that those responsible for managing change locally have the requisite competency to handle concerns and grievances that parents may bring as regards the impact of change on their children's rights and welfare. Taking into account the OCO's experience that parents are the principal advocates for the rights of their children, it is suggested that the nature and extent of concerns that may be generated by the changes arising from the work of the Forum will be limited if the change process is underpinned by a demonstrable commitment to the rights, welfare and best interests of children and that grievances which may arise will be appropriately handled if policies and procedures for doing so are informed by this same commitment.