

Inaugural PILA/PILS Project Joint Annual Conference

Friday 11th November 2011

Workshop on Children:

The Voice of the Child in Legal and Administrative Proceedings

Presentation by Kathryn Stevenson, Head of Legal Services

(Children's Law Centre)

Introduction to Children's Law Centre

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

CLC is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Article 2 - Children shall not be discriminated against and shall have equal access to protection.
- Article 3 - All decisions taken which affect children's lives should be taken in the child's best interests.
- Article 12 - Children have the right to have their voices heard in all matters concerning them.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a dedicated child specific legal advice/ information/ representation service. We have a dedicated free phone legal Advice Line for children and young people and their parents called CHALKY and a youth advisory group called Youth@clc.

We provide the only LEXCEL and OISC¹ accredited dedicated legal advice and representation service for children and young people in Northern Ireland. During the six month period from 1st April to 30th September 2011, there were 1043 children and young people's issues raised with the CHALKY advice and information service. This six month period included the two busiest months since the service began in May 2000. (June (215 issues) and September 2011 (220 issues raised. Of the legal advice and information sought by or on behalf of children and young people, 34% (353 enquiries)

¹ Office of the Immigration Services Commissioner

related to education, including identification, assessment and provision of services for children with special educational needs. A further 27% (281 enquiries) related to family law, with contact and residence the main issue raised accounting for just over half of the category total, parental responsibility (40) and child protection (52) the other key issues raised. Other categories of legal advice provided include mental health (26), social security (39), housing (22), human rights and justice (61), children who are looked after and those who are leaving care (54).

We monitor and analyse all calls to CHALKY, our Free Phone Legal Advice Line and based on a quantitative and qualitative analysis we undertake strategic legal representation. The children we represent are those whose rights are significantly infringed. CLC provides free legal representation at tribunals including school admission and expulsion appeal tribunals, SENDIST, employment and social security appeal tribunals. Within the framework of the Law Society's waiver, CLC also provides legal representation in a limited number of strategic cases usually in Judicial Reviews and has undertaken Third Party Interventions with a particular focus on children's rights. When undertaking work which may attract legal aid, CLC applies for legal aid on behalf of the individual child applicant in proceedings. Legal aid is only available for a very small proportion of our legal advice and representation work. We regularly provide representation in tribunal proceedings on a pro bono basis.

Quantifying Unmet Legal Needs of Children and Young People

The Children's Law Centre has for many years advocated for a Legal Needs Survey to be conducted in Northern Ireland in order to identify and assess the unmet legal needs of children and young people, who represent one third of the population in Northern Ireland.

In a climate of public spending cuts in Northern Ireland we are now seeing the introduction of a range of public authority policies and decisions with the potential to impact adversely on some of the most vulnerable children and young people in our society. This is already evident in some instances e.g. on services such as literacy support for children with learning difficulties, provision of classroom assistance for children with special educational needs, school transport services, CAMHS and allied health services provision for children and young people. We predict that the demands on CLC's legal services will continue to increase over the next 3 year period as children and their parents may need to seek legal recourse in order to protect and maintain their public service entitlements and to vindicate their human rights.

Children and Young People and Access to Justice

The Howard League for Penal Reform has stated that it is its experience that,

*“...most young people perceive the law as something which operates against them.”*²

It has been suggested that the law’s approach to when a child is legally allowed to do certain things contributes in part to this perception and provides a reason why young people suffer disproportionately from legal problems³.

They also have stated that they believe that young people are generally unaware that the law can be used positively to enforce their rights and to assist with problems which they are having in relation to education, healthcare, housing, employment etc. While many young people have a keen sense of injustice, they may not be aware of the possibility of legal challenge and the existence of legal remedies.

Research commissioned by the Public Legal Education Network, *“Measuring young people’s legal capability”*⁴ found that young people had little or no knowledge of most basic rights and entitlements; in particular they seemed unaware of any system of civil law to which they had recourse. In addition, young people’s lack of knowledge of their rights/entitlements, legal processes or where to go for help impeded their ability to recognise that they were dealing with an issue with legal elements. In addition, young people are more susceptible to clusters of problems which can have a cascading effect resulting in an increase in and worsening of law related issues, such as housing and relationship problems⁵. This in turn affected their ability to plan how to resolve the problem, with the most marginalised young people reporting feeling lost and helpless. The experience of the Children’s Law Centre supports this analysis and we are extremely aware of the fact that children and young people who use the Centre do not describe what is happening to them in terms of legal problems with options for legal redress.

Even where young people are aware that their problems may have a legal remedy, many are unaware of where and how to access legal services and of the availability of legal aid to assist them. All too often, even when help is sought, young people are much less likely to successfully take advantage of the services available to them and continue to suffer adverse effects such as ill health, or the loss of income or a home.

CLC believes that there needs to be publicly funded education for children in respect of their legal rights and how to assert their rights as part of the process of determining the legal needs of children and young people. Public legal education can provide young people with the core emotional and practical skills needed to improve their overall life-chances. Improving levels of legal capability through the provision of legal education not only means individuals are better equipped to cope with risks and challenges, but are also more able to recognise and take advantage of the opportunities they encounter for legal advice and representation.

² *Children and young people : seeking fair access to justice*” Laura Janes, Howard League for Penal Reform, Legal Action Group Magazine, October 2009

³ *Ibid.*

⁴ 2009, Independent Academic Research Studies

⁵ *“A trouble shared – legal problems clusters in solicitors and advice agencies”* Richard Moorhead and Margaret Robinson, Department for Constitutional Affairs, November 2006

The need for child accessible and child-friendly legal service provision

The other relevant component in respect of children accessing legal services is the need for the service to be both child friendly and child accessible. Research and practice has shown that children are more comfortable with accessing advice and services via telephone as opposed to visiting their local solicitor or advice centre. This was the model successfully developed by CLC when launching CHALKY our free phone advice line for children and young people. Given technological developments such as e-mail, Face book and Twitter it would be our view that when working with children and young people consideration must be given to how they communicate and access information. Such technologies could be used to make children aware of their legal rights and to deliver initial legal information and advice.

In addition, CLC would recommend that those providing legal advice to children must be skilled at communicating with children including in determining legal competency, securing clear instructions and explaining to children the law as it pertains to their legal issue. This is a very specialist skill base. We would also recommend that children's legal advisers must be versed in child protection law and procedures so that they can identify potential risks and make appropriate and timely referrals to social services and/or the police as the need may arise. Finally, it is our experience at CLC, given our vulnerable client base, that often it is necessary to provide 'outreach' services to our clients and effectively we travel to them rather than relying on them making it into our offices to obtain legal advice and support.

Status of the United Nations Convention on the Rights of the Child

While the UNCRC is not currently binding in domestic courts in Northern Ireland, there have been some significant developments with regard to the courts' interpretation of the UNCRC. The House of Lords has indicated that children's rights under domestic law should be interpreted in accordance with the UNCRC. Baroness Hale in *Smith v The Secretary of State for Work and Pensions* stated –

*"Even if an international treaty has not been incorporated into domestic law, our domestic legislation has to be construed so far as possible so as to comply with the international obligations which we have undertaken. When two interpretations of these regulations are possible, the interpretation chosen should be that which better complies with the commitment to the welfare of children which this country has made by ratifying the United Nations Convention on the Rights of the Child."*⁶

Lord Carswell has also recently commented upon the standing of the UNCRC in the House of Lords case, *Re E*,⁷

⁶ [2006] UKHL 35 at para 78

⁷ [2008] UKHL 66, para 60

“The UNCRC was ratified by the United Kingdom in 1991, but this was not incorporated into domestic law. The requirement is nonetheless a consideration which should properly be taken into account by the State and its emanations in determining upon their actions.”

This statement of Lord Carswell importantly affirms the need for the State to take its provisions into account when determining policy and legislation.

In addition, The European Court of Human Rights has been explicit in the role of the UNCRC as an interpretive tool for the European Convention on Human Rights as incorporated by the Human Rights Act 1998. In the case of *A v UK*⁸ in reaching the conclusion that children are entitled to state protection in the form of effective deterrence, against such serious breaches of personal integrity the European Commission on Human Rights and the European Court both referred to Article 19 of the UNCRC, which requires states to take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse.⁹

In family cases, the European Court has also recognised the status of the UNCRC by referring to Articles 3 (the best interests of the child) and 12 (the voice of the child) of the UNCRC in the interpretation of Article 8 ECHR, for example in relation to cases relating to the involvement of children and young people in decision making processes.¹⁰ In the field of youth justice, the case of *T & V v UK*¹¹ concerned the application to the European Court of two boys convicted of the murder of a young child. The two boys complained that they were denied the right to a fair trial under Article 6 of the ECHR and that their rights under Article 3 of the ECHR were breached. The European Court in a judgment dated 16 December 1999 found that there had been a violation of Article 6 (the right to a fair trial). In this judgement the European Court considered at length Article 40 of the UNCRC in relation to the age of criminal responsibility in the United Kingdom and in relation to the issue of privacy for juveniles in criminal proceedings, noting in particular that the UNCRC was binding in international law on the United Kingdom in common with all the other member states of the Council of Europe.¹²

The Right of the Child to be Heard in Legal Proceedings

Article 12 of the UNCRC deals specifically with the voice of the child and requires State Parties **to assure to a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views**

⁸ *A v UK*, (EurCtHR), App.No.25599/94, (23 Sept 1998) and also at [1998] 2 FLR 959.

⁹ As above, para 22.

¹⁰ *Sahin v Germany*, (EurCtHR), App. No 30943/96, paragraph 37 (11 Oct 2001) *Sommerfeld v Germany*, (Eur Ct HR) App. No 31871/96 (11 Oct 2001).

¹¹ *T & V v UK* (EurCtHR), App. No. 24724/94 and App.No.24888/94, (16 Dec 1999). See also the case of *S.C. v UK*, (EurCtHR), App. No. 60958/00, 15 June 2004.

¹² *Op Cit* n 35, paras 66 and 77.

of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 is one of the key principles of the UNCRC and places an obligation on the Government to have respect for the views of the child. Article 12 affords a child not only the right to be heard but to have their views taken into account and given 'due weight'. The broader term of 'participation' is often used to describe the process of listening to the views expressed by a child and taking cognisance of those views, interests, expectations and goals expressed when reaching a decision affecting the child.

The UN Committee on the Rights of the Child's General Comment on Article 12 interprets the obligations on Government by virtue of Article 12 of the UNCRC. It states that the Government shall assure the right to be heard to every child, "capable of forming his or her own views". This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that State parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognise that she or he has the right to express them.

The General Comment also states that Article 12 imposes no age limit on the right of the child to express her or his views, and discourages state parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him. Article 12 is clear that the views of the child must be, "given due weight in accordance with the age and maturity of the child". This requirement makes it clear that age alone cannot determine the significance of a child's views. As the General Comment on Article 12 states, children's levels of understanding are not uniformly linked to their biological age. For this reason, the views of the child have to be assessed on a case-by-case basis.

At the Children's Law Centre's Inaugural Annual Lecture in 2006, The Right Honourable Baroness Hale of Richmond, who at that time was a judge in the House of Lords and who currently sits in the Supreme Court, described the role of the family courts to try and give children the experience of being respected and being listened to,

"Children want to communicate. If they are not given ways of doing so at difficult times in their lives, then sooner or later they will wish they could have had their say, and that someone had asked them earlier. Second, children have a right to know what is going on around them and to understand important matters about their lives. If we try too hard to protect them from painful truth they may imagine something much, much worse. Third, children need to be able to tell other people, and others need to know when to

ask, if they are suffering harm. Lastly, children may suffer harm in future if they are kept in ignorance of or are unable to talk about important matters in their lives.

So a child involved in court proceedings needs a voice, a channel through which to communicate with the decision makers; she may also need a champion, someone who can conduct an independent factual investigation on her behalf or help the warring adults to see things from their child's point of view; but she also needs a friend, someone who can explain to her what is going on and why, and above all what the decision is and why".¹³

The Participation of Children and Young People in Court Proceedings

It is well established in European judgments such as Sahin v Germany and Sommerfeld v Germany¹⁴ that children have the right to procedural fairness in private family law proceedings under Articles 6 and 8 of the ECHR.

In Mabon v Mabon¹⁵, the Court of Appeal in England recognised the rights of children to participate more fully in proceedings. Expert opinion was sought and an appeal was allowed on behalf of three adolescent children (aged 17, 15 and 13) seeking separate representation in residence order proceedings under the Family Proceedings Rules in England. The Court of Appeal emphasised the importance of courts complying with Article 12 UNCRC and reflected that,

"...in the 21st Century, there is a keener appreciation of the autonomy of the child and the child's consequential right to participate in decision making processes that fundamentally affect family life.. unless we in this jurisdiction are to fall out of step with similar societies as they safeguard Article 12 rights, we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgement of welfare".

In a Hague Convention case of RE D (A Child) (Abduction: Foreign Custody Rights)¹⁶, Lady Hale asserted that the principle of hearing the child is of universal application and consistent with international obligations under Article 12 UNCRC,

"There is a growing understanding of the importance of listening to children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more

¹³ Children's Law Centre Inaugural Annual Lecture 2006: Making Children's Rights Real, The Right Honourable Baroness Hale of Richmond DBE, Lord of Appeal in Ordinary at page 13

¹⁴ Sahin v Germany (2003) 36 EHRR 43 and Sommerfeld v Germany (2001) ECHR 595

¹⁵ [2005] EWCA Civ 634

¹⁶ (2006) UKHL 51

a reason for failing to hear what the child has to say than it is for refusing to hear the parents' views... As any parent knows, there is a large difference between taking account of a child's views and doing what he wants".

In the Supreme Court case of Re W¹⁷ consideration was given to the Article 6 right to a fair trial in the context of children being called to give evidence in court proceedings. At paragraph 22 of the judgment, Baroness Hale states:

"The existing law erects a presumption against a child giving evidence which requires to be rebutted by anyone seeking to put questions to the child. That cannot be reconciled with the approach of the European Court of Human Rights, which always aims to strike a fair balance between competing Convention rights. Article 6 requires that the proceedings overall be fair and this normally entails an opportunity to challenge the evidence presented by the other side.... Striking that balance in care proceedings may well mean that the child should not be called to give evidence in the great majority of cases, but that is a result and not a presumption or even a starting point".

Baroness Hale indicates that when a court is deciding whether a particular child should be called as a witness, there are two main considerations to be made in striking that balance. Firstly, what advantages the evidence will bring to determining the truth and secondly, the damage it may do to the welfare of this or any other child.¹⁸

In the more recent Supreme Court case of ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)¹⁹, the over-arching issue in the case was the weight to be given by the Court to the best interests of children who would be directly affected by a decision to deport either one or both of their parents from the United Kingdom. At paragraph 37 of her judgement Lady Hale states:

"the immigration authorities must be prepared at least to consider hearing directly from a child who wishes to express a view and is old enough to do so. While their interests may be the same as their parents' this should not be taken for granted in every case. As the Committee on the Rights of the Child said, in General Comment No. 12 (2009) on the Right of the Child to be Heard, at para 36,

"in many cases... there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision-maker by the representative".

Children can sometimes surprise one".

¹⁷ 2010 UKSC 12

¹⁸ Ibid, at paragraph 24

¹⁹ [2011] UKSC 4 (On appeal from [2009] EWCA Civ 691)

We note the increasing efforts the Courts in Northern Ireland are making to give effect to the voice of children of all ages when determining cases under the Children (Northern Ireland) Order 1995. For example, specific consideration was given to the views of the child in *E (Voice of the Child) [2005]*.²⁰ The case concerned a grandmother's application to oppose the relocation of a 12 year old girl to live in Chile, the home of the child's mother. The grandmother, who lived in Northern Ireland, had cared for the child for a significant period of time whilst her mother was addressing difficulties with drug addiction. The child was separately represented by the Official Solicitor, who applied on her behalf for a residence order to remain in Northern Ireland with her grandmother. The residence order was granted in accordance with the child's wishes.

In his judgement, Judge Gillen referred to the "gathering momentum of the importance of listening to children" and taking into account their perspectives when decisions are being made about them. He also referred to Article 12 as "*one important yardstick against which the family justice system in Northern Ireland must be evaluated*".

There are a plethora of mechanisms which may be adopted by a court in order to ascertain the true wishes and feelings of a child. For example, by the commission of expert reports, a report from the Court Children's Officer (Family Proceedings Court only) or the Guardian Ad Litem, by offering a child the opportunity to attend court as a witness (where appropriate, having due regard to the child's welfare), by video link, by arranging a recorded meeting with the judge and legal representatives in Chambers, or by way of separate representation. Ultimately, a court will determine the best mechanism to adopt, taking into account the particular circumstances of the case, to ensure the best interests of the child concerned and to provide a fair hearing for all parties to proceedings.

Baroness Hale has vocalised her support for greater access to the judge by children who are the subject of legal proceedings²¹. At the Children's Law Centre Inaugural Annual Lecture in 2006²² she acknowledged that courts are becoming less resistant to the idea of seeing children and identifies three circumstances where it should *definitely* be done:

- *The first circumstance is where the child has asked for leave to make her own application to the court* – The reasoning for this is two-fold. She asserts that the court can only grant this application if satisfied that the child has sufficient maturity to make it. Also, this affords an opportunity to explain to the child what direct participation in proceedings entails.
- *The second circumstance is when there is a dispute about whether the professionals have accurately reported the child's views.*
- *The third and most important is where the child has asked to see the judge.*

²⁰ [2005]NI Fam 12.

²¹ See 'The Voice of the Child' (2007) IFL 171

²² See Children's Law Centre Inaugural Annual Lecture 2006: Making Children's Rights Real, The Right Honourable Baroness Hale of Richmond DBE, Lord of Appeal in Ordinary at pages 19-20

In a recent Northern Ireland High Court judgment, which involved a 14 year old child's application for discharge of a care order²³, Judge Stephens refers to meeting the child in chambers accompanied by her solicitor and a member of court staff on two occasions. The judge reflects on his second meeting with the child which *"provided (him) with a further opportunity to understand and appreciate her character, understanding and motivation... The meeting also importantly afforded her the opportunity of assessing amongst other matters the care, the independence and the human concern afforded to her"*.

The decision in this case was to refuse to discharge the care order. However, the judgement reflects the courts willingness to accept emerging case law and jurisprudence in this area and to ensure a child the opportunity to participate in her case.

Northern Ireland Judgements Relating to the Education of Children

The Northern Ireland Courts have also been willing to acknowledge the child as an autonomous rights holder when interpreting the statutory duties placed on school managers and education and library board's under education law and in determining suitable education provision for children with special educational needs. The Children's Law Centre represented the child applicant in the case of *M (a Minor) Re Application for Judicial Review* [2004] NICA 34. The case involved an appeal against a Principal's decision to suspend a child from school for 5 days for, *"...knowingly handling and promoting...- while on school property, an illegal substance, suspected to be cannabis resin"*.

The barrister for the respondents made two preliminary objections which he contended were grounds to dismiss the applicant's case. Firstly, he argued that the child did not have standing to take the case and the applicant should have been the parents rather than the child. Secondly, he argued that as the applicant had already transferred from primary to secondary education, *"...the impugned suspension decision could have no educational impact him and it was fanciful to suggest that his reputation was damaged by the record retained by the Education and Library Board"*.

Judge Girvan rejected these arguments and stated,

"In the present case the grievance is that of M who suffered the suspension. His argument is that his suspension was legally flawed. On the second preliminary ground of objection the impugned decision was a decision made by the principal to suspend the plaintiff on the basis of a recorded finding by the principal that M was knowingly handling and promoting cannabis resin... If that decision was unfair on the basis that it was made on foot of an unfair procedure it is not in my view of merely academic interest. I see no reason why M should not be entitled to establish the irregularity of a

²³ DONA (a pseudonym)(No.7)(Application to discharge care order)

decision which resulted in his suspension on potentially seriously damaging findings of misconduct of a serious nature”.

The judge held upon examination of all of the evidence that the decision of the school principal was unlawful and was procedurally unfair. The respondents appealed this decision to the Court of Appeal and the appeal was dismissed. It was directed by the Court of Appeal that all records of the child’s suspension be deleted.

The case of *JN (a minor) v SEELB* [2005] NIQB 46 involved a successful judicial review of the SEELB for its failure to give individualised consideration to the provision of funding for a home based programme of Applied Behavioural Analysis for a young child with autism. Again, in this case, the issue of the child’s standing as an applicant to proceedings was challenged by the respondents. Judge Morgan (now Lord Chief Justice for Northern Ireland) stated as follows:

“...what is in issue here is not just the place at which the educational provision is to be delivered but the nature of that provision. The determination in the Statement accordingly establishes the content of the educational provision which the State considers it appropriate to supply for the child. It must follow, in my view, that any unlawful conduct by a public authority in the determination of that provision is capable of giving rise to a breach of the right to education in article 2 of the First Protocol. In those circumstances, I consider that the minor has established a sufficient interest in this case”.

Education Tribunals

The impact of the denial to children of their right to education (under Article 2, Protocol 1 ECHR and Articles 23, 28 & 29 UNCRC) is far reaching and lifelong.

In its Concluding Observations in 2008, the UN Committee registered its concerns that there had been little progress in enshrining Article 12 in education law and policy by the UK and Northern Ireland and that insufficient action had been taken to ensure that Article 12 rights are applied to children with disabilities.²⁴

Children and young people under 18 years have no statutory right of appeal against a decision to suspend or expel them from school. Parents have the right of appeal to an Expulsion Appeal Tribunal. The Education (NI) Order 2006 legislates for the introduction of a unified suspension and expulsion scheme, a newly constituted universal expulsion appeal tribunal and a mechanism for appeal against suspension. Presently, the only legal remedy against school suspension is judicial review. There is no indication as to when the proposed changes will take effect and, in spite of the UN Committee’s recommendations to the contrary, there is *still* no provision to extend appeal rights to pupils under 18 years.

²⁴ CRC/C/GBR/CO/4, 20th October 2008 at paragraph 32, Respect for the views of the child

Given that children spend a considerable proportion of their lives in education it is unsurprising that the issues in respect of which CLC are most likely to be contacted relate to education and in particular educational provision for children and young people with special educational needs. Such has been the demand for legal advice and advocacy in this area that CLC has employed a dedicated lawyer to advise and represent at SENDIST appeals.

There is currently no legal aid available for representation at SENDIST or other education tribunal appeals. General legal advice and assistance under the Green Form Scheme may be obtained in SENDIST appeal cases. Authority may be extended to allow for the commission of expert reports and to include preparation for hearing in some limited cases. Noting that very few children have independent financial means, it is a fundamental denial of access to justice that children cannot access legal aid for legal representation at SENDIST or other education tribunals, including school admission and expulsion appeals and Exceptional Circumstances Body appeals.

Further, it is CLC's experience at SENDIST Appeal hearings that the education and library boards will attend for hearing with a number of educational and medical experts providing oral evidence on their behalf. They always attend with a Board solicitor and very often instruct a barrister to direct evidence and present their case. This is a clear 'equality of arms' issue and restricts access to justice to those who are economically disadvantaged.

In recognition of children's rights under Article 12 UNCRC and of their right to procedural fairness under Articles 6 and 8 ECHR, CLC has lobbied strongly in its recent response to the Access to Justice Review in Northern Ireland for children to have access to legal aid support in all education related tribunals.

CLC has also argued for the extension of legal aid to cover legal representation for children and young people at SENDIST appeals and at other education tribunal appeals in exceptional cases. We have sought to rely on the UN Committee's recommendation that State parties establish legal aid support systems to provide children involved in legal proceedings with appropriate legal support and assistance in our submissions.

I wish to conclude this presentation by reflecting on lessons from practice and in particular sharing with you an example of a SENDIST case where we feel we got it right and more importantly, the child felt that her voice was heard and taken into account. (This is a real case and is referred to only with the express consent of the child and of her parents):

Carla's case came before the Special Educational Needs and Disability Tribunal when she was 12 years of age and attending 2nd year in grammar school. She has special educational needs and a disability arising from cerebral palsy. Her condition does not affect her cognitive ability but impacts significantly on her physical mobility. Carla uses a wheelchair throughout the school day although she can walk with assistance.

The main dispute with the Education and Library Board arose in relation to the provision of physiotherapy and Carla's need for physical activity during the school day to prevent her body from becoming stiff and sore. This, in turn, had an adverse impact upon her concentration and affected her ability to access the curriculum. This dispute ran for about two years from the time that Carla was in P7 until the early part of her 2nd Year Studies.

Children's Law Centre represented Carla at the Tribunal. The first hearing did not produce a satisfactory result and was appealed and listed again using the tribunal review process. Carla decided to become directly involved at this point as she felt strongly that despite struggling at school for two years she had not been listened to.

How was the child's voice heard in this case?

Initially Carla's views were gathered from her mother during consultation and throughout all stages of preparation for the first SENDIST hearing. Carla had wanted her mother to speak for her at the initial hearing and declined to attend herself as she felt it might be too intimidating.

She had felt able to give her views in a written statement and via an Educational Psychologist who provided a report.

When her case was appealed, Carla was invited to attend Children's Law Centre to discuss with her directly how she felt about her situation, what difficulties she had faced in trying to study her lessons, what she would like to happen and whether she would now wish to attend and give her views directly to the Tribunal panel.

Carla is an articulate and astute child who we assessed as being of sufficient maturity and personal integrity to give her opinion directly to a Tribunal panel. We assessed that it would be of great value to Carla to ensure she had an opportunity to be heard and to let others know that this was HER case and she was directly affected every day by the decisions made by others. She was very keen to attend the tribunal in person with our full support.

In the event, Carla did attend. She was accompanied by her mother and a relative who was able to take her out for frequent breaks so that the situation would be easier to cope with and manage both physically and emotionally. She was present throughout consultations and negotiations and was directly asked her views throughout. She was given full explanations for what was happening and why.

The result was a satisfactory settlement without the need for a hearing and the settlement is now in operation. Carla is feeling much better and this is reflected in her improving academic performance. She is getting on with being a typical teenager and enjoying her hectic social and academic life.

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