



**ombudsman  
do leanaí  
for children**

**Ombudsman for Children's Office**

**Observations regarding  
the Department of Education and Skills' consultation  
paper on the role of denominational religion in the  
school admissions process and possible approaches  
for making changes**

**March 2017**

## 1. Introduction

The Ombudsman for Children's Office (OCO) was established in 2004 under primary legislation, the Ombudsman for Children Act 2002. The Ombudsman for Children is independent of Government and other civil society actors and is accountable to the Oireachtas. The role of the OCO is to promote and safeguard the rights and welfare of children and young people; to conduct investigations of complaints regarding actions by public bodies and to provide research and policy advice to Government and other bodies.

We welcome this consultation which examines the role of denominational religion in the school admissions process. This issue is also being addressed by the Oireachtas. The current processes, both in the Oireachtas and in the Department of Education and Skills, reflect the broader changes towards a more pluralist Irish society.

Ireland is a vastly different country than the one which enacted the Constitution of Ireland in 1937. At that time, the State's population was overwhelmingly and actively Catholic and a Catholic ethos was reflected in many aspects of public administration.<sup>1</sup> Three quarters of a century later, the context in which the Constitution operates has changed radically. Ireland now faces the challenge of accommodating and integrating diverse beliefs (both religious and non-religious), cultures and languages in an education system that is almost entirely denominational.

As Glendenning notes, the law has a critical role to play in upholding the constitutional framework, vindicating individual rights which include the right to education, and in advancing equality, justice and the common good. *'It has fallen to this generation to ensure that its legislative programme for education is capable of accommodating the diverse needs of all the people on this island, including those of different faiths and none within the framework of national law and EU law, where relevant, and in keeping with our international law commitments.'*<sup>2</sup>

The Department of Education and Skills has outlined four possible approaches for dealing with the issue of religion and admissions to oversubscribed schools in its consultation paper. It is the opinion of this Office that Option 4(i) – Outright repeal of section 7(3)(c) of the Equal Status Act in respect of publically-funded primary schools is the only option which provides for non-discriminatory access to state funded primary schools for all children.

The issue of religion and admissions to oversubscribed schools is often presented and debated as a balancing of the constitutional rights of parents as the primary and natural educator of the child, and of religious institutions to manage their own affairs. In this submission, we will emphasise that the balancing of rights required must take full account of the rights of the child in respect of education, freedom from discrimination, freedom of conscience and religion, and the right to privacy. This submission draws attention to the

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<sup>1</sup> Michael Ford and David Leonard, *Constitutional Law of Ireland*, (3<sup>rd</sup> edition), 2013, at p. 636.

<sup>2</sup> Dympna Glendenning, *Education and the Law*, Bloomsbury, 2012, at p. 11.

rights of the child at a domestic level, as well as Ireland's international children's rights obligations, particularly under the UN Convention on the Rights of the Child (CRC).

## **2. International human rights standards**

### **2.1 The Rights of the Child: Key Principles of International Law under the Convention on the Rights of the Child (CRC)**

There are four principles of the CRC which have particular relevance with regard to the rights of the child in the context of education. Firstly, freedom from discrimination, which is an immediate obligation under Article 2 of the CRC.

Secondly, Article 3 of the CRC - the best interests principle: *In all actions concerning children, whether undertaken by administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.* The Department of Education and Skills must ensure that any future proposal of legislation in this area is guided by the "best interests" principle.

Thirdly, the principle of the evolving capacity of the child, the basis for which can be found in Articles 5 (evolving capacities), 12 (voice of the child) and 14 (freedom of thought, conscience and religion). In accordance with the evolving capacities of the child, where a conflict between children and parents in the exercise of their respective educational rights arises, priority should attach to the views of the sufficiently mature child.<sup>3</sup>

Finally, Article 12(1), of the CRC provides that *"State parties shall assure to the child who is capable of forming his or her own views the right to express those views in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."*

This principle is reflected in Government commitments as outlined below.

### **2.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Article 13 of the ICESCR recognises the right of everyone to education. The UN Committee on Economic, Social and Cultural Rights has commented that while the precise and appropriate implementation of the right to education will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels should exhibit the essential features of availability, accessibility (physically, economically and without discrimination), acceptability (form and substance is acceptable to students and parents) and adaptability.<sup>4</sup>

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<sup>3</sup> Conor O'Mahony, *Education Rights in Irish Law*, Thomson Round Hall, Dublin 2006, at p. 60.

<sup>4</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* (1999) UN doc. E/C.12/1999/10 at para 6.

In elaborating on the non-discrimination aspect of the right to education, the Committee has emphasised that the prohibition against discrimination enshrined in the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.<sup>5</sup> The Committee has affirmed that establishing separate educational systems or institutions for particular groups does not necessarily constitute a breach of the Covenant, as provided for in Article 2 of the UNESCO Convention against Discrimination in Education (1960).<sup>6</sup> However the Committee has highlighted that States must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.<sup>7</sup>

### **2.3 International Covenant on Civil and Political Rights (ICCPR)**

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion. It requires States to respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The Committee charged with monitoring the implementation of the Covenant expressed concerns in relation to the application of Article 18 in the area of education in Ireland. Specifically, the Committee noted that the vast majority of Ireland's primary schools are privately run denominational schools and recommended that the State increase its efforts to ensure that non-denominational primary education is widely available in all regions of the

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<sup>5</sup> *Ibid.* at para 31.

<sup>6</sup> *Ibid.* at para 33. Article 2 of the UNESCO provides as follows:

"When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article I of this Convention:

(a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;

(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level."

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)* (1999) UN doc. E/C.12/1999/10 at para 37.

State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.<sup>8</sup>

## **2.4 UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

Article 5 of CERD requires States to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. The Convention identifies the right to education as one to which Article 5 of the Convention applies specifically.

In its 2011 Concluding Observations on Ireland's report under CERD, the UN Committee for the Elimination of Racial Discrimination recalled its previous concerns regarding the lack of diversity of school types in Ireland.<sup>9</sup> The Committee expressed its regret that the provisions of the Equal Status Act 2000 give the power to schools to refuse to admit students to denominational schools on grounds of religion, if it is deemed necessary to protect the ethos of the school.<sup>10</sup> The Committee reiterated its previous recommendations to accelerate the establishment of alternative non-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.<sup>11</sup> The Committee also recommended the monitoring of incidents of discrimination on the basis of belief.<sup>12</sup>

## **2.5 United Nations Human Rights Council**

In 2011, Ireland underwent its first examination by the UN Human Rights Council as part of the Council's Universal Periodic Review process (UPR). One of the recommendations made to Ireland was to eliminate religious discrimination in access to education. The State did not accept the recommendation and in doing so, it drew attention to the growing diversity in school types and indicated that issues of access were being considered as part of the review of the school admission system.<sup>13</sup>

The Working Group of the Human Rights Council held its second review of Ireland on the 11 May 2016 and their report was adopted on the 13 May 2016. Recommendations made to

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<sup>8</sup> UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under Article 40 of the Covenant: International Covenant on Civil and Political Rights: Concluding Observations of the Human Rights Committee: Ireland* (2008) UN Doc. CCPR/C/IRL/CO/3 at para 22.

<sup>9</sup> See UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations: Ireland* (2005) UN Doc. CERD/C/IRL/CO/2.

<sup>10</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations: Ireland* (2011) UN Doc. CERD/C/IRL/CO/3-4 at para 26.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ireland, Addendum Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies presented by the State under Review* (2012) UN Doc. A/HRC/19/9/Add.1 at para 107.48.

establish a system providing children and their parents the real opportunity to choose from among religious, multi-denominational or non-denominational types of schooling and curricula were supported by the Government.<sup>14</sup>

Recommendations to accede to the Convention against Discrimination in Education,<sup>15</sup> to abolish religious discrimination in the schools<sup>16</sup> and to review and amend laws, as appropriate, to ensure that publically-funded schools provide equal access to education for all, irrespective of one's faith or religious affiliation<sup>17</sup> were to be examined by Ireland. Responses were given to these recommendations in an Addendum to the Report of the Working Group in September 2016.<sup>18</sup>

## 2.6 European Convention on Human Rights (ECHR)

The ECHR has particular relevance in the Irish context because, in addition to being ratified by Ireland in 1953, it was indirectly incorporated into Irish law by the European Convention on Human Rights Act 2003.<sup>19</sup>

There are a number of provisions of the Convention and its Protocols relevant to education:

- Article 2 of Protocol 1 provides that: *“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”*
- Article 9 provides that: *“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either*

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<sup>14</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Ireland* (2016) UN Doc. A/HR/C/33/17 at para 136.2.

<sup>15</sup> *Ibid* at para 136.2.

<sup>16</sup> *Ibid* at para 136.29.

<sup>17</sup> *Ibid* at para 136.80.

<sup>18</sup> The Government stated there “are no plans for Ireland to ratify the UNESCO Convention. Ireland is committed to the principles of equality of educational opportunity contained in the Convention” and that “Article 44 of the Constitution specifically protects religious freedom. The Constitution also protects the right to freedom of expression of convictions and opinions. The Equal Status Act 2000 which outlaws discrimination in relation to the admission of a student, makes provision for exemptions to apply in the case of single sex schools and in the case of schools where the objective is to provide education in an environment that promotes certain religious values. All religious denominations and groups are free to establish their own social, cultural and educational institutions, including schools”. The Government also stated “the Education (Admission to Schools) Bill 2016, which was published in July 2016, proposes to introduce a number of important changes to make enrolment policies fairer and more transparent”.

See Human Rights Council, *Report of the Working Group on the Universal Periodic Review Ireland, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under Review* (2016) UN Doc. A/HRC/33/17/Add.1 at paras 136.2, 136.29 and 136.80.

<sup>19</sup> Section 2 of the 2003 Act provides that in interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions. Section 3 further provides that, subject to any statutory provision (other than the 2003 Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions.

*alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others."*

- Article 14 provides that: "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"
- Article 8 provides that everyone has the right to respect for his or her private and family life and that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for the protection of health or morals, or for the protection of the rights and freedoms of others.
- Article 6 provides that in the determination of civil rights and obligation, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

A full analysis of the case-law that has developed under these provisions of the Convention is beyond the scope of this advice. However, there are a number of principles that have emerged of direct relevance to the General Scheme, which are summarised below:

- The provisions of the ECHR and its Protocol must be read as a whole. Therefore, the right to education under Article 2 of Protocol 1 is to be read in light of Article 9, Article 14 and Article 8 of the Convention.<sup>20</sup>
- The term "respect" in the first sentence of Article 2 of Protocol 1 means more than "acknowledge or "take into account". It denotes not only a negative undertaking not to interfere with the right to education but also places a positive obligation on the State to vindicate the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.<sup>21</sup>

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<sup>20</sup> Case "*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*" v. Belgium, 1474/62, 23 July 1968 at para 1. The Applicants alleged that Articles 8 and 14 of the Convention and Article 2 of the Protocol had been violated as the Belgian State did not provide for any French-language education in the municipalities where they lived or such provision was inadequate. See also; *FolgerØ v. Norway*, 15472/02, 29 June 2007. Relying upon Article 9 and Article 14 of the ECHR, and Article 2 of Protocol 1, the applicants complained about the authorities' refusal to grant their children full exemption from a school subject which covered Christianity, religion and philosophy. The ECtHR held that there had been a violation of Article 2 of Protocol 1.

<sup>21</sup> Case "*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*" v. Belgium, 1474/62, 23 July 1968 at para 3, *Lautsi v. Italy*, 30814/06, 18 March 2011 at para 4 and *FolgerØ v. Norway*, 15472/02, 29 June 2007 at para 84.

- The first sentence of Article 2 of Protocol 1 guarantees, in the first place, a right of access to educational institutions existing at any given time.<sup>22</sup>
- The right to education in Article 2 of Protocol 1 calls for regulation by the State which may vary according to the needs and resources of the community and of individuals. However, this regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the ECHR.
- States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the ECHR. In the context of Article 2 of Protocol 1, this concept implies that parents cannot require the State to provide a particular form of teaching. However, the State must achieve a just balance between the protection of the general interest of the community and the respect due to fundamental rights, with particular importance attached to the latter.<sup>23</sup>
- In order to determine whether legislation is compatible with the ECHR regard must be had to the material situation it sought to meet. Abuses could occur as to the manner in which the provisions in force were applied by a school or teacher and the authorities have to take utmost care to see that parents' religious and philosophical convictions were not disregarded by carelessness, lack of judgment or misplaced proselytism.<sup>24</sup>
- Whenever discretion capable of interfering with an ECHR right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation.<sup>25</sup>
- The European Court of Human Rights (ECtHR) has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. The difference in treatment must also have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.<sup>26</sup>
- In certain circumstances, if there are factual inequalities between groups, a failure to attempt to correct this inequality through different treatment may in itself give rise to a breach of Article 14.<sup>27</sup>
- A general policy or measure, that has disproportionately prejudicial effects on a particular group, may be considered discriminatory even if it is not specifically aimed at that group.<sup>28</sup>

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<sup>22</sup> Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, 1474/62, 23 July 1968 at para 4 and *Folgerø v. Norway*, 15472/02, 29 June 2007 at para 84.

<sup>23</sup> Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, 1474/62, 23 July 1968 at paras 5-7,10 and *Lautsi v. Italy*, 30814/06, 18 March 2011 at para 61.

<sup>24</sup> *Folgerø v. Norway*, 15472/02, 29 June 2007 at para 84.

<sup>25</sup> *D.H. and Others v. The Czech Republic*, 57325/00, 13 November, 2007 at para 206.

<sup>26</sup> Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, 1474/62, 23 July 1968 at para 10 and *D.H. and Others v. The Czech Republic*, 57325/00, 13 November, 2007 at para 11. In the latter case, the applicants, who were of Roma origin, alleged that they had been discriminated against in the enjoyment of their right to education on account of their race or ethnic origin. They maintained that they had been treated less favourably than other children in a comparable situation without any objective or reasonable justification.

<sup>27</sup> *D.H. and Others v. The Czech Republic*, 57325/00, 13 November, 2007 at para 175.



- Within the educational sphere, the ECtHR has held that where legislation produces a discriminatory effect, it is not necessary to prove any discriminatory intent on the part of the relevant authorities.<sup>29</sup>
- Measures taken in the field of education may affect the right to respect for private or family life if their aim or result were to disturb private or family life in an unjustifiable manner, including by separating children from their parents in an arbitrary way.<sup>30</sup>
- The procedural safeguards provided for in Article 6 of the ECHR are applicable to accessing educational places.<sup>31</sup>

## 2.7 European Commission Against Racism and Intolerance (ECRI)

ECRI is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, anti-Semitism, intolerance and discrimination on a range of grounds. The Commission prepares reports on its analysis of these matters in member States and issues recommendations to member States.

In its most recent report on Ireland, ECRI noted the preponderance of denominational schools in the Irish education system, particularly under the patronage of the Catholic Church, and commented that: *“Whereas it is commendable that the vast majority of such schools accept children of all faiths, or lack thereof, without the obligation for such children to participate in Catholic religious instruction and rites, ECRI finds that in some cases where the demand exceeds the availability of places, schools may introduce admission schemes based not only on academic performance, but also on filiation links with the school based on siblings attendance, which is understandable, and parents’ attendance, which is difficult to comprehend. A preferential admission policy favouring children whose parents attended the particular school can have indirect discriminatory effects on children of immigrant background, or from other disadvantaged groups like Travellers, whether they are Catholic or not.”*<sup>32</sup>

ECRI also raised Ireland’s decision not to ratify the UNESCO Convention Against Discrimination in Education. As was the case with the UN Human Rights Council, the Government indicated that it has no plans at present to ratify the Convention.<sup>33</sup>

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<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* at para 12.

<sup>30</sup> *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium*, 1474/62, 23 July 1968 at para 7.

<sup>31</sup> In *Emine Arac v. Turkey*, 9907/02, 28 September 2008, the ECtHR held that the right of access to higher education fell within the scope of the applicant's personal rights and was therefore civil in character (see paras 24-2). As a result Article 6(1) was deemed to be applicable in this case and the Court abandoned the case-law of the Commission in *Simpson v. The United Kingdom*. In *Orsus and Others v. Croatia*, 15766/03, 16 March 2010, the Grand Chamber upheld the judgment in *Emine Arac v. Turkey* at para 104 and confirmed that the right of access to primary education is also a right of a civil nature.

<sup>32</sup> Council of Europe: European Commission Against Racism and Intolerance (ECRI), *ECRI report on Ireland (fourth monitoring cycle): Adopted on 5<sup>th</sup> December 2012* (2013) UN Doc. CRI(2013)1 at para 102.

<sup>33</sup> *Ibid* at para 10.

### 3. National Standards

#### 3.1 Better Outcomes, Brighter Futures

Better Outcomes, Brighter Futures (BOBF)<sup>34</sup> sets the Government's key commitments to children and young people up to the age of 24 from 2014 to 2020. The Strategy (Goal 3) articulates the importance of listening to and involving young people as a fundamental social inclusion process through which children and young people are empowered to become actors in the decisions that affect their lives and to be socially included, active citizens in their own right. As part of this, Goal 3 states that Government recognises the right of children and young people to have a voice in decisions that affect them, both individually and collectively. It particularly stresses the importance of having a voice in decisions made in their local communities, schools and in the wider formal and non-formal education system. The Strategy acknowledges the evolving capacity of children and young people to participate in the decisions that affect them and highlights that adults have a key role in enabling and facilitating their voice to be heard.<sup>35</sup>

As highlighted in the Strategy, *"failure to listen to children and young people in the past has resulted in a failure to protect them from abuse and neglect"*. The Strategy acknowledges the importance of supporting children to express themselves in order to develop and, from an early age, the child's capacity to be reflective, critical citizens. It also notes that participation is a process, both collectively and individually. This process should be respectful of the dignity of children and young people and the contribution they have to make, based on their unique experiences and perspectives. It involves taking their views and opinions seriously and acknowledging and responding to them appropriately. The Strategy also stresses that accommodations and supports are required to ensure that the voices of 'seldom-heard' children are heard (e.g. children with disabilities), stressing that while their voices may be harder to reach and hear, they are no less important.<sup>36</sup>

It is worth highlighting the commitments made by Government in this National Strategy in the context of the General Scheme as this piece of legislation presents a crucial opportunity to ensure that many of the core commitments made are implemented.

- **Consultative initiatives with children in education**

The government has committed to a number of consultative initiatives with children in order to realise the goals set out in the Strategy. Relevant to the area of education are

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<sup>34</sup> Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The national policy framework for children & young people 2014 - 2020* at [http://dcya.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://dcya.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf).

<sup>35</sup> *Ibid* at p. 31.

<sup>36</sup> *Ibid*.

commitments to consult with children and young people on policies and issues that affect their lives, and in particular, to create mechanisms to provide children and young people with the opportunity to be heard in primary and post-primary schools and centres for education through Student Councils or other age-appropriate mechanisms.<sup>37</sup>

In relation to participation of children and young people in political and policy making processes, the Government committed to developing and implementing a National Policy on Children and Young People's Participation in Decision-making (published 2016 – see below). They also committed to establish a Children and Young People's Participation Hub to support Government departments and agencies in the implementation of the National Policy on Children and Young People's Participation in Decision-making.<sup>38</sup>

### **3.2 National Strategy on Children and Young People's Participation in Decision-making**

The National Strategy on Children and Young People's Participation in Decision-making was published in June 2015 with a goal of ensuring *“that children and young people will have a voice in their individual and collective everyday lives across the five national outcome areas.”*<sup>39</sup> Education and schools are identified as one of four objectives and priority areas for action: *“Children and young people will have a voice in decision-making in early education, schools and the wide formal and non-formal education system”*.<sup>40</sup>

According to the National Strategy on Children and Young People's Participation in Decision-making, *“effective and meaningful participation of children and young people [in education] has been shown to be beneficial to children and young people, and to schools. Students' participation generally, and student councils more particularly, can improve academic standards, reduce rates of early school-leaving, improve discipline and facilitate students in acquiring communication, planning and organisational skills.”*<sup>41</sup>

- **Ensuring children have a voice in decision-making throughout the education system**

Objective 2 of the Strategy refers to children and young people having a voice in decision-making in early education, schools and the wider formal and non-formal education systems. It highlights *“the importance of children and young people's involvement in decision-making*

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<sup>37</sup> *Ibid* at p. 32.

<sup>38</sup> *Ibid*.

<sup>39</sup> Department of Children and Youth Affairs, *National Strategy on Children and Young People's Participation in Decision-making 2015-2020* (2015) at <http://www.dcy.gov.ie/documents/playandrec/20150617NatStratonChildrenandYoungPeoplesParticipationinDecisionMaking2015-2020.pdf> at p. 3.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid* at p. 7.

*in education policy, in the running of schools and services, in school inspections, in schools' self-evaluations, in the curriculum, in behaviour and bullying policies, in support services and other areas, as outlined in the Action Plan".*<sup>42</sup>

- **Taking children's views into account**

As stated in the Strategy, according to the UN Committee on the Rights of the Child and in line with its General Comment on Article 12 of the UNCRC, *"the duty to take account of what children say applies in a variety of contexts. For example, at macro level, children's views should be taken into account in the development of national policies and in the design of services. At micro level, children's views should be taken into account in the individual decision-making that affects their daily lives. The UN Committee has highlighted the relevance of children's involvement in decision-making in schools and local communities, given that these are the spaces where many important decisions are taken that directly affect their lives. These are two of the priorities of the present strategy."*<sup>43</sup>

While the public consultation on the issue of religion and admission to schools is welcomed, we are concerned that no effort has been made to directly consult with children on this issue which is predominantly a child rights issue. In view of children's right to be heard and to have due weight given to their views in all matters affecting them, we believe that the Department should take steps to consult with children so that their views can be taken into account in the context of completing its findings on this consultation. Correspondingly, we recommend that a final decision on the issue should be deferred until the Department has afforded children an opportunity to be heard.

#### **4. A child's right to freedom of thought, conscience and religion, non-discrimination and education**

While parents have extensive rights with respect of the religious education of their children under domestic, European and international law, it is important to stress that the right to freedom of thought, conscience and religion also extends to children as individual rights holders. As previously outlined, Article 2 of the United Nations Convention on the Rights of the Child (CRC) requires State Parties to respect and ensure the rights set out in the Convention to each child within their jurisdiction without discrimination of any kind. In order to achieve this, States are required to take all appropriate measures to ensure that the child is protected against all forms of discrimination.

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<sup>42</sup> *Ibid* at pp. 13-14.

<sup>43</sup> *Ibid* at p. 20.

Article 14 of the UNCRC provides that:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 28 of the CRC calls on state parties to recognise the right of the child to education. Article 29 states that the education of the child shall be directed to the development of the child's personality, talents, and mental and physical abilities to their fullest potential. It is directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations. It focuses on the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own. The preparation of the child for responsible life in a free society is highlighted in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples. Article 29 also states that no part of Article 28 or 29 *“shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State”*.

The UN Committee on the Rights of the Child (the Committee) published General Comment No.1 on Article 29 of the Convention in 2001.<sup>44</sup> In this General Comment, the Committee state *“Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life”*<sup>45</sup>. The Committee also state that discrimination on any basis, *“whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities”*.<sup>46</sup>

In its General Comment No 13 on the Right to Education, the Committee charged with monitoring the implementation of the International Covenant on Economic, Social and

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<sup>44</sup> United Nations Committee on the Rights of the Child, *General Comment No.1: The Aims of Education* (2001) UN Doc. CRC/GC/2001/1.

<sup>45</sup> *Ibid.* at para 8.

<sup>46</sup> *Ibid.* at para 10.

Cultural Rights stated that “*educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party*”<sup>47</sup> and that “*education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings*”.<sup>48</sup>

The Committee is also of the view that “*States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination*”.<sup>49</sup> In its General Comment No.3, the Committee confirmed that States parties have “*a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels*” of each of the rights enunciated in the Covenant, including “*the most basic forms of education*”.

In the context of Article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in Article 13 (1); to provide primary education for all in accordance with Article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with “*minimum educational standards*” (Article. 13 (3) and (4))”.<sup>50</sup>

UNESCO defines inclusion “*as a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children*”.<sup>51</sup> The Human Rights Committee, in its General Comment on Article 18 of the International Covenant on Civil and Political Rights, states that “*The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant... nor in any discrimination against adherents to other religions or non-believers.*”<sup>52</sup>

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<sup>47</sup> Economic and Social Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education* (1999) UN Doc. E/C.12/1999/10 at para 6(b).

<sup>48</sup> *Ibid.* at para 6(d).

<sup>49</sup> *Ibid.* at para 37.

<sup>50</sup> *Ibid.* at para 57.

<sup>51</sup> UNESCO, *Guidelines for Inclusion, Ensuring Access for All* (2005) at <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf> at p. 13

<sup>52</sup> Human Rights Committee, *General Comment No. 22* (1993) UN Doc. HRI/GEN/1/ Rev.8 at para 9.

The Committee examined Ireland's Compliance with its obligations under the CRC in January 2016. In its concluding report<sup>53</sup>, the Committee expressed concern at the very small number of non-denominational schools and the continuing practise of discriminatory admissions policies on the basis of the child's religion and/or whether his or her parent(s) are former students of the school. The Committee recommended that the State party "*expeditiously undertake concrete measures to significantly increase the availability of non-denominational or multi-denominational schools and to amend the existing legislative framework to eliminate discrimination in school admissions, including the Equal Status Act*".

The majority of primary schools are owned and managed by the Roman Catholic Church and these schools cater for the majority of pupils and the largest proportion of minority-faith schools are owned and managed by the (Protestant) Church of Ireland. Over the years, other denominational schools have been set up - a small number of Presbyterian schools, one Methodist school, one Jewish school and two Muslim schools. There are also an increasing number of primary schools that operate through the medium of Irish. Multi-denominational primary schools are one of the fastest growing primary school sectors.<sup>54</sup> According to Glendenning, "*it was central to the contemporary debate on ownership and control of schools that the denominational school owners would retain, free from State intrusion, the school ethos or characteristic spirit of the school*".<sup>55</sup>

While acknowledging the contribution that the denominations have made to the Irish educational system since its foundation, religious diversity has increased in Ireland over the last number of decades. Ireland has transformed from a predominantly Catholic country to one which now includes a significant number of different religious and secular beliefs. According to the ESRI Consultation Paper on the proposed Education about Religions and Beliefs (ERB) and Ethics curriculum, "*the role of denominational schools in multicultural societies and the provision of religious education have increasingly become topics of controversy*".<sup>56</sup>

An Oireachtas Library & Research Service Spotlight Report, *Choosing segregation? The implications of school choice*,<sup>57</sup> states it is estimated that 10% of students in primary schools and 8% of students in post-primary schools are immigrants. A selection from the 2011 census shows that 256,830 people declared themselves as having no religion, 124,445 declared themselves as Church of Ireland, England, Anglican, Episcopalian, 48,130 declared

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<sup>53</sup> Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland* (2016) UN Doc. CRC/C/IRL/CO/3-4 at paras 35 & 36.

<sup>54</sup> ESRI, *School Sector Variation Among Primary Schools in Ireland* at <http://www.esri.ie/pubs/BKMNEXT221.pdf> at paras 5-6.

<sup>55</sup> Dympna Glendenning, *Education and the Law*, Bloomsbury, 2012 at p. 128.

<sup>56</sup> Merike Darmody and Emer Smyth, *Consultation Paper: ESRI Education about religions and beliefs (ERB) and ethics, Views of teachers, parents and the general public regarding the proposed curriculum for primary schools* (2017) at <http://www.esri.ie/pubs/bkmnext324.pdf> at p. 4.

<sup>57</sup> Oireachtas Library & Research Service Spotlight Report, *Choosing segregation? The implications of school choice, No.1 of 2015* (2015).

themselves as Muslim and 44,003 declared themselves as Orthodox Christian<sup>58</sup>. Ireland now faces the challenge of accommodating and integrating diverse beliefs (both religious and non-religious), cultures and languages in an education system that is almost entirely denominational. There is a mismatch between the increasingly diverse profile of the population and the dominance of religious, particularly Catholic, schools. This leads to a need for a high degree of transparency and democracy in the manner in which education is legislated for, particularly in matters relating to the relationship between religion and education in Ireland.

In England, it is accepted that Catholic schools differ from secular schools because of the doctrinal mission for which they were established.<sup>59</sup> In the case of *Choudhury v Governors of Bishop Challoner Roman Catholic Comprehensive School* in 1992 it was recognised that “*in circumstances where the number of parental preferences for application exceeded the number of places available, the school in its admission policy was lawfully entitled to discriminate in favour of Christians and specifically Roman Catholics*” which indicated “*that religious discrimination, as opposed to racial discrimination, is allowed in certain English denominational schools so that they retain their character and provide the specific type of education for which they were instituted*”.<sup>60</sup> Information from the Department of Education of England and Wales<sup>61</sup> indicates that 33.78% of state funded schools are religious schools. Compared to Ireland, where 96% of primary schools are denominational, it is clear that there is a significantly larger choice of school types in England and Wales for parents and children who do not wish to be educated in the ethos of a particular faith.

An ESRI Report on School Sector Variation Among Primary Schools in Ireland states that “*access to the different school types is geographically variable; for example, the Muslim and Jewish schools are located in Dublin while multi-denominational schools are available only in 19 counties, mostly in urban areas. The overwhelmingly denominational nature of the primary school system means that many Catholic schools have pupils from minority faith or secular groups among their student body*”.<sup>62</sup> Taking the current predominantly denominational nature of the school system,<sup>63</sup> as well as the high number of stand-alone schools,<sup>64</sup> into account, we recognise that it will never be possible to provide an education in line with the religious preference of each and every parent and child. While the recently

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<sup>58</sup> CSO, Population Usually Resident and Present in the State by Religion and Nationality, 2011 at <http://www.cso.ie/en/statistics/population/populationclassifiedbyreligionandnationality2011/>.

<sup>59</sup> Dymna Glendenning, *Education and the Law*, Bloomsbury, 2012 at pp. 128 & 129.

<sup>60</sup> *Ibid* at p. 129.

<sup>61</sup> Department of Education, *FOI Release, Maintained Faith Schools*, 20 July 2010 at <https://www.gov.uk/government/publications/maintained-faith-schools/maintained-faith-schools>.

<sup>62</sup> ESRI School Sector Variation Among Primary Schools in Ireland at <http://www.esri.ie/pubs/BKMNEXT221.pdf> at pp. 6 & 7.

<sup>63</sup> Report on the Forum for Patronage and Pluralism in the Primary Sector (2012) [http://www.education.ie/en/Publications/Policy-Reports/fpp\\_report\\_advisory\\_group.pdf](http://www.education.ie/en/Publications/Policy-Reports/fpp_report_advisory_group.pdf) at p. 1.

<sup>64</sup> *Ibid* at p. 2.



announced plans to accelerate provision of multi and non-denominational schools<sup>65</sup> are welcome, it is recognised that short of implementing a completely secular educational system, it will never be possible to provide the variety of denominational, multi-denominational and non-denominational school types necessary to suit the demands of every parent and child.

In a system of mixed school patrons, with a significant majority from one particular religious patron, it is incumbent on the state to ensure that equal rights are granted to all students, regardless of the patron of the school they wish to attend. Therefore, all children across the country, whether living in urban or rural areas, whether having access to a selection of school types or not, should have equal access to all schools, regardless of their religion, or none, or the denominational nature of their preferred school.

Under the international human rights instruments that Ireland has signed up to, most importantly from a child's rights based perspective, the CRC, a child has a right to non-discriminatory access to education. As it currently stands a child of no religion, or a different religion to a school patron, faces discrimination when seeking enrolment in denominationally controlled schools. All children, regardless of their belief, faith, or lack thereof, should be entitled to equal access state funded schools. Option 4(i) – Outright repeal of section 7(3)(c) of the Equal Status Act in respect of publically-funded primary schools, is the only option which provides for non-discriminatory access to state funded primary schools for all children.

Therefore, we recommend that Option 4(i) should be selected by the Department of Education and Skills as it provides for a child's right's based approach for all children seeking admission to state funded schools.

## **5. The Irish Constitution and educational provision**

Constitutional issues have been long relied upon for the failure of the State to remove discrimination in accessing education in Ireland on grounds of religion. Unlike the European norm, where education is perceived as a social right which falls to the State to vindicate as a national obligation, the Irish Constitution has been described as having '*a mere State-aiding role in education*'.<sup>66</sup> It was envisaged at the time of drafting that enshrining an indirect duty of educational provision on the State would protect the State from the full expense of provision. In the past, the under-resourced State relied heavily on church participation and funding in education.

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<sup>65</sup> Department of Education and Skills, *Press Release - Minister Bruton announces new plans to accelerate provision of multi- and non-denominational schools*, 30 January, 2017 at <http://www.education.ie/en/Press-Events/Press-Releases/2017-Press-Releases/PR17-01-30.html#sthash.9NDnoLy4.dpuf>.

<sup>66</sup> Dymna Glendenning, *Education and the Law*, Bloomsbury, 2012 at p.18.

Thus, while the Education Act 1998 represented a major shift of control of education from church to state, school ownership and employment within schools has remained largely within the churches and religious denominations. Most denominational primary schools are owned and managed by the Roman Catholic Church. Despite the broad nature of the Article 42 of the Constitution on education, public education at primary level is almost entirely provided by privately owned, publicly-funded schools which, are recognised by the Education Act 1998.<sup>67</sup> This basic fact has had implications for the role and power of religious institutions in the management of schools in Ireland.

Difficulties arise due to the historic fact that control in education has been ceded away from the people and the State and given to the Church, which does not seek its mandate from the public.<sup>68</sup> In *O'Keefe v Hickey*<sup>69</sup>, Hardiman J stated: '*...the State involvement in the governance of national schools, for historical reasons, is indirect not to say oblique and general rather than particular. The role which the State might otherwise have occupied is, by their own urgent desire, occupied by the Churches and other voluntary bodies, in this case the Catholic Church.*' He pointed out in the Supreme Court that the Minister for Education is deprived of control of education by the interposing of the patron and the manager between him and the children.

The OCO is of the view that there is a need for a high degree of transparency and democracy in the manner in which education is legislated for, particularly in matters relating to the relationship between religion and education in Ireland. A public understanding of the Church's current Constitutional, legislative and practical role in relation to educational provision in Ireland is required. It is crucial that there is a full public debate in advance of any legislative changes and that Irish citizens are afforded the opportunity to engage fully in such a process.

The Department of Education and Skills, as well as elected representatives have an obligation to ensure that the debate in relation to these issues is broadly based and does not deal with the various issues in a piecemeal way. It is crucial that sufficient time is given to consider Ireland's obligations under international human rights law as well as national law.

## **6. The right of the child to education**

The tripartite nature of the right to education which involves the respective rights of the child, the parents of the child, and the interests and corresponding duties of the State, has meant that the balancing of the competing rights and needs is necessarily complex. This has

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<sup>67</sup> In fact, the relatively recent establishment of the community national school are the first public national schools established in the history of the State. *Ibid* at p. 142.

<sup>68</sup> *Ibid* at p. 80.

<sup>69</sup> *O'Keefe v Hickey* [2009] 2 IR 302.

been reflected in case law when the Irish courts, and indeed the law, have “*struggled to strike an appropriate balance between the interests of the various parties in cases where they have come into conflict.*”<sup>70</sup> However, as both O’Mahony and Glendenning have noted, education is primarily the right of the child and despite the various interests in the field of education, it is the children who are at the “*heart of the system.*”<sup>71</sup>

A striking feature of the law in relation to education has been the undue emphasis placed in the rights of parents,<sup>72</sup> and the rights of religious institutions, at times even at the expense of the child. O’Mahony has argued that “*the parent-oriented provisions of the Irish Constitution, coupled with a highly conservative interpretation offered by the court, has arguably had a detrimental impact on the rights of the child.*”<sup>73</sup> Glendenning similarly points out that children’s rights in education have traditionally been perceived as vested in their parents.

With regard to the balancing of the various constitutional rights at issue, it is important to ensure that children’s rights as individual rights holders are considered and upheld without discrimination. The first paragraph of the recently inserted article 42A of the Irish Constitution is a strong endorsement of the principle of non-discrimination and represents an important paradigm shift in recognising children as active rights holders. This important commitment should form the basis for the further enhancement of children’s rights within Irish law and policy. The balancing of rights required with regard to the various interests in respect of educational provision should be re-examined having regard to the Thirty-First Amendment to the Constitution enacted in April 2015 and the commitment by the State to protect and vindicate the natural and imprescriptible rights of all children.

With regard to matters of social policy where there is a balancing of competing constitutional rights, case law has shown that the courts are very reluctant to substitute their view over the Oireachtas and a strong presumption of constitutionality prevails with regard to decisions made by the Oireachtas in this regard.<sup>74</sup> We concur with the view of the Irish Human Rights and Equality Commission that “*the paramount concern in balancing the rights of individual children and the rights of institutions such as religious patrons must be the rights of the children to an education under reasonable conditions without discrimination.*”<sup>75</sup>

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<sup>70</sup> Conor O’Mahony, *Education Rights in Irish Law*, Thomson Round Hall, Dublin 2006, at p. 26.

<sup>71</sup> Dymna Glendenning, *Education and the Law*, Bloomsbury, 2012 at p.5. See also, Conor O’Mahony, *Education Rights in Irish Law*, Thomson Round Hall, Dublin 2006, at p.58.

<sup>72</sup> Conor O’Mahony, *Education Rights in Irish Law*, Thomson Round Hall, Dublin 2006, at p.59.

<sup>73</sup> *Ibid.*

<sup>74</sup> See judgments of Chief Justice Denham in *Fleming v Ireland* [2013] IESC 19 and in *MR v An tArd Chláraitheoir* [2014] IESC 60.

<sup>75</sup> Irish Human Rights and Equality Commission, *Observations on the Education (Admissions) Bill 2016*, November 2016, at p.13.

The Committee should also be cognisant of the rights of the child under the CRC, particularly the child's right to freedom of thought, conscience and religion. The terms religions and beliefs also protect the right not to profess any religion or belief. While the rights of parents to ensure the religious and moral education for their children in conformity with their own convictions is a well highlighted feature of this debate, the emphasis of the CRC is on the freedom of religion of the child with parental direction consistent with the child's evolving capacities.

Furthermore, an analysis of the relevant case law shows that there is no constitutional impediment to the State requiring that all publicly funded schools cease discriminating on the grounds of religion in their admissions policies.<sup>76</sup> The State can reasonably impose a requirement that schools do not discriminate on the grounds of religion in their admissions policy as a pre-condition of public funding.<sup>77</sup> The reasonableness of such a pre-condition is supported by the fact that 96% of primary schools and 58% of secondary schools in Ireland are under denominational patronage.

Constitutional rights can be subject to limitations to reconcile them with other constitutional rights. In this regard, the courts have held that a strong presumption of constitutionality exists where the Oireachtas has legislated on matters of competing and complex social issues. The Courts have also stated that significant social matters of public policy is an area for the Oireachtas.

## **7. A child's right to privacy**

Article 16(1) of the CRC states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. The Committee on the Rights of the Child has found that issues affecting the child's privacy may arise in relation to religion in schools as the requirement for a formal request to abstain from religious instruction exposing the faith of children may be felt to be an infringement of their right to privacy.<sup>78</sup>

While the Committee has expressed concern at children having to identify their religion in order to opt-out of religion classes, we are of the view that having to declare a faith or belief when applying to enrol in school creates a similar issue with a child's right to privacy. This is due to the fact that a child has to identify themselves as having a belief or faith that is the same, or different, to that of the school ethos. Therefore, the removal of religion from

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<sup>76</sup> Michael Lynn SC, Opinion, Education Equality, 11 July 2016.

<sup>77</sup> Dr. Conor O'Mahony, Dr. Eoin Daly and Dr. David Kenny, *Opinion on the Constitutionality of Reforming s. 7(3) (c) of the Equal Status Act 2000* at [https://media.wix.com/ugd/08f4c2\\_079801b03f9b4b9a81dae58d53d85147.pdf](https://media.wix.com/ugd/08f4c2_079801b03f9b4b9a81dae58d53d85147.pdf).

<sup>78</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child, September 2007* at [https://www.unicef.org/publications/index\\_43110.html](https://www.unicef.org/publications/index_43110.html) at pp. 192 and 204.

school admissions criteria is necessary in order to protect the privacy rights of children of no, or a different, religion to that of the school patron.

## **8. Impact of other approaches on children's rights**

The Department of Education and Skills consultation paper offered four options to address the issue of the role of religion in School admissions. As previously stated, the OCO is of the view that Option 4(i) under Outright Prohibition should be pursued. The other options outlined in the consultation paper which include Catchment Area, Nearest School Rule and Quota System, do not provide for a non-discriminatory child right's based approach to school admissions.

In 2016 the Committee on the Rights of the Child expressed concern about Irish schools '*continuing to practice discriminatory admissions policies on the basis of the child's religion*' and recommended that Ireland amend existing legislative framework, including the Equal Status Act, to eliminate discrimination in school admissions. Similar recommendations were also made by the UN Human Rights Committee in 2014 with respect to Ireland's obligations under the International Covenant on Civil and Political Rights and by the Committee on the Elimination of Racial Discrimination in 2011 with respect to Ireland's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

Discriminating against children on the grounds of religion in accessing publicly funded education was given legislative underpinning through section 7(3)(c) of the Equal Status Act 2000. The proposal under the Education (Equal Status) Bill does not go far enough as it does not allow for the prohibition of religion as an admission criteria for publicly funded schools. The religious exemption clause in the Education (Admissions to School) Bill 2015 allows a school to refuse admission to a student not of the same denomination as the school but only insofar as this is essential to maintain the ethos of the school. This provision should be amended (along with section 7(3)(c) of the Equal Status Act) in order to ensure that no child is given preferential access to a publicly funded school on the basis of their religion.

The exemption under Section 7(3)(c) of the Equal Status Act should be amended to ensure the principle of non-discrimination in school admissions policies. While the office is of the view that an outright repeal of section 7(3)(c) should be considered, the section could also be amended to ensure that it cannot be relied upon by schools in receipt of public funding. Such an amendment could also be considered in the context of Ireland's obligations under the ECHR, the framework of EU anti-discrimination law and under international human rights treaties, particularly the CRC.

## **8.1 Approaches 1 and 2**

According to the consultation paper **Approach 1** (Catchment Area) would prohibit religious schools from giving preference to children of their own religion who live outside the catchment area ahead of non-religious children or children of other religions who live inside the catchment. **Approach 2** (Nearest School Rule) would allow religious schools to give preference to a religious child only where it is that child's nearest school of that particular religion.

In both of these options, children who share the same religion as the patron of the school would receive preferential admission to their local school ahead of children of no, or a different, religion. While the number of children receiving preferential admission would be limited to religious children living in the catchment area, or those applying to their nearest school, these options still permit discriminatory treatment against children of no, or a different, religion. These children would only be admitted to the available places left after children sharing the faith of the school patron have been admitted. Therefore, these options do not ensure a non-discriminatory child's rights based approach to school admissions.

It is stated in the consultation paper that there is the possibility that church or religious authorities would be involved in adjudicating any boundary disputes that may occur if catchment areas are used. In order to have a fair, impartial system that is free from any perceived bias, we are of the view that a public body other than church or religious authorities should settle any problems regarding boundary disputes. This responsibility could be held by the Department of Education and Skills itself or passed to the relevant city or county councils who would have access to town and village boundary data.

Implementation of Approaches 1 and 2 could also lead to situations where children living in areas experiencing poverty and social exclusion would have no real option other than to remain in these areas to attend school while children living in more affluent areas would attend schools in their own areas. This could lead to continued deprivation in some areas with corresponding sustained privilege in others.

## **8.2 Approach 3**

Approach 3 of the consultation paper would allow denominational schools to implement a quota system which would allow a school to give preference to children of its own religion in respect of only a certain proportion of places, meaning that the remaining places would be allocated based on other admissions criteria.

There is no information given in the consultation paper regarding the size of this potential quota so its potential impact is difficult to quantify. However, the operation of a quota

system permits discrimination in school admission policies as children of no, and of a different, religion will only be able to apply for a set proportion of the school places available. This approach will only serve to limit, not end, existing discriminatory admissions practices which give preference to children of the same religion as the school patron.

### **8.3 Approach 4(ii)**

Approach 4(ii) allows for the repeal of the first part of the Equal Status Act in respect of publically-funded primary schools, but with provision to allow denominational schools to require parents or students to sign a declaration stating that they support, respect, will cooperate with or won't disrupt the ethos of the school. Requiring a signature, a declaration to agree to support and respect the ethos of a school, when they may not do so, violates a child's right to freedom of thought, conscience and belief.

### **8.4 Approach 4(iii)**

Approach 4(iii) allows for the repeal of the first part of the Equal Status Act in respect of publically-funded primary schools, but with provision to allow minority schools to reserve a certain percentage of places for children of their religion.

This provision would create further discriminatory provisions between children of different religions and none. A Catholic child seeking admission to a Church of Ireland School would be treated differently to a Church of Ireland student seeking admission to a Catholic school. A child of no religion would face different treatment if seeking admission to a Catholic school or a minority faith school. It would also lead to situations where a minority faith student who has a school of their faith in their locality would be guaranteed a place in their school of choice whereas a minority faith student with no school of their ethos nearby would not be.

As already stated, allowing preferential access to students that share the ethos of the school they wish to attend, even if just for a limited number, creates discriminatory admission practices against children of no, or a different faith, to that of the school patron, even if this school patron belongs to a minority faith.

## **9. Denominational children who wish to attend school run by multi denominational or other religious patron**

This issue cannot be simplified by assuming that religious parents want their children to attend a school that shares their ethos. A recent survey shows that 48% of parents chose their child's school because of location, 37% because of reputation, 12% due to shared

ethos and 3% because places were available.<sup>79</sup> The findings of the Report on Patronage and Pluralism<sup>80</sup> along with the recently announced school divestment programme indicate that there is significant demand for multi-denominational schools.<sup>81</sup> Information sourced from Educate Together states “*more parents than ever want to send their children to an Educate Together school*”<sup>82</sup>.

Therefore, provision should be made to ensure that the rights of religious children who wish to attend a school run by a patron other than the denomination they belong to are also respected.

## 10. Religion in the School Day

This current consultation aims to address the issue of the role of religion in school admissions. However, a related matter of concern for this Office is the issue of the denominational ethos of the patron of the school permeating the school day.

We are addressing this issue in some detail in our submission on the Education (Admission to Schools) Bill 2016. In brief, it is our view that in order for Ireland to comply with its international human right’s obligations with regard to freedom of thought, conscience and religion of all children, a long term goal should be the removal of denominational religious classes from state funded schools. While it is accepted that such a change will take time to be accepted and implemented, at both societal and legislative levels, it is considered that this is not a sufficient reason to continue the deferral of this issue. Therefore, as an interim measure, provisions should be made for the removal of religion from the integrated curriculum and the religious teaching of the school patron should be confined to a specific religion class. This would ensure that children who opt-out of these set religion classes would not be exposed to unwanted religious influence in other parts of the school day.

Religion classes should be scheduled at a time which would allow parents to make alternative arrangements for their children, as outlined in the Report on Patronage and Pluralism mentioned above. This would allow children of no religion, or a different religion, to easily opt out of religious classes if desired.

In order to respect the right of freedom of thought, conscience and belief of all children, religion should be removed from the integrated curriculum. Denominational religious

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<sup>79</sup> Equate, *Religion and Schools: Parents Choices* (2017) at [https://media.wix.com/ugd/08f4c2\\_0655f34b38b049748cce39a75acc2bb7.pdf](https://media.wix.com/ugd/08f4c2_0655f34b38b049748cce39a75acc2bb7.pdf) at p. 14.

<sup>80</sup> Report on the Forum for Patronage and Pluralism in the Primary Sector (2012) at [http://www.education.ie/en/Publications/Policy-Reports/fpp\\_report\\_advisory\\_group.pdf](http://www.education.ie/en/Publications/Policy-Reports/fpp_report_advisory_group.pdf).

<sup>81</sup> Department of Education and Skills, Press Release, 30 January, 2017, *Minister Bruton announces new plans to accelerate provision of multi- and non-denominational schools* at <http://www.education.ie/en/Press-Events/Press-Releases/2017-Press-Releases/PR17-01-30.html#sthash.V5Kqvo78.dpuf>.

<sup>82</sup> Educate Together, Press Release, *The Facts about Funding for Educate Together*, 27 January 2016 at <https://www.educatetogether.ie/media/national-news/funding-fact>.



teaching should be confined to a specific class which should be scheduled in such a way to make it practical for children to opt-out if so requested.

## **11. Other Education Legislative Developments**

The Education (Admission to Schools) Bill 2016 was published on 6 July, 2016 and is currently making its way through the relevant procedures in the Houses of the Oireachtas. The Admission to Schools Bill did not contain any amendments to the impact of the Equal Status Acts on admissions to denominational schools. While the fact that this issue is now being dealt with is to be welcomed, we are concerned that legislation dealing with different aspects of school admissions are being dealt with in a fragmented manner. All current legislation dealing with school admissions should be dealt with in the same bill so these issues can move together through the proper procedures and safeguards laid out in the legislative process.

## **12. Recommendations**

**The OCO is of the view that as Approach 4(i) is the only option which provides for non-discriminatory access to state funded education. Therefore, this Office recommends that this is the option which should be implemented by the Department of Education and Skills following this consultation.**

1. The exemption under Section 7(3)(c) of the Equal Status Act should be amended to ensure the principle of non-discrimination in school admissions policies. While an outright appeal of section 7(3)(c) should be considered, the section could also be amended to ensure that it cannot be relied upon by schools in receipt of public funding. The removal of the protections afforded to denominational schools under the Equal Status Act may impact their ability to maintain denominational schools that are genuinely of that ethos. However, as outlined in the human right's instruments detailed above, a right to receive an education is an internationally protected human right. A right to hold a religion, or none, is also an internationally protected human right. A right to receive a state funded education in the ethos of your chosen faith or belief is not an internationally protected human right.
2. In view of children's right to be heard and to have due weight given to their views in all matters affecting them, the Department should take steps to consult with children on this issue. A final decision should be deferred until the Department has afforded children an opportunity to be heard.

3. Religion should be removed from school admissions criteria to protect the privacy rights of children of no, or a different, religion to that of the school patron.
4. In order to respect the right of freedom of thought, conscience and belief of all children, religion should be removed from the integrated curriculum.  
Denominational religious teaching should be confined to a specific class which should be scheduled in such a way to make it practical for children to opt-out if so requested.