

NORTHERN IRELAND HUMAN RIGHTS COMMISSION

SUBMISSION TO THE REVIEW GROUP ON SELECTION AT AGE 11 IN THE EDUCATION SYSTEM OF NORTHERN IRELAND

The Northern Ireland Human Rights Commission has considered selection at age 11 within the education system of Northern Ireland in the context of the internationally accepted rules and principles for the protection of human rights. The Commission's submission to the Review Group is largely confined to that aspect of the debate.

The Commission has considered the research evidence provided in *The Effects of the Selective System of Secondary Education in Northern Ireland* and would like to draw the Review Group's attention to a number of issues that the report raises from a human rights perspective.

The effect of the transfer procedure tests on the primary curriculum

There is widespread concern among primary school teachers that the transfer procedure tests have significant adverse effects on the primary curriculum (Sel. 6.1). This occurs in two ways. First, those children being prepared for the tests by primary schools appear to receive a restricted version of the common curriculum. The tests cover just three areas of the curriculum (English, Mathematics and Science) with the result that other topics such as history, geography, art, music and physical education can be displaced. Moreover, the tests emphasize knowledge and technique, arguably at the expense of other skills such as creative writing and experimental science (Sel. 6.1 pp. 4-7). Secondly, there is significant evidence to suggest that the needs of children who are not participating in the tests are often neglected. Many teachers report that they fail to give those children who are not undertaking the tests "equal" attention and that the needs of these children are often "inadequately catered for" (Sel. 6.1, p. 21). Article 2 of the First Protocol of the European Convention on Human Rights has been interpreted in such a way as to give all children a right not to be denied an *effective* education. Moreover, in so far as preparation for the transfer tests has a distorting effect on the primary curriculum, it may be denying children the right to develop their personalities, talents and abilities to their fullest potential, something which is required by both the Universal Declaration of Human Rights and United Nations Convention on the Rights of the Child.

The impact of the tests on individual children

Many parents and teachers are of the view that participation in the tests has a significant detrimental effect on the mental well being of many children (Sel.8.1). It is reported that 45% of children felt anxious or very anxious before the tests. Moreover, some of the individual case studies indicate that certain children experience wholly unacceptable

levels of distress prior to the examinations. It might be queried whether the need to undertake such a high-stake test at such a young age might be categorised as “inhuman treatment” which is unconditionally prohibited by Article 3 of the European Convention on Human Rights and Article 37 of the United Nations Convention on the Rights of the Child. Although the test is, in theory, optional, the reality is that parents are compelled to enter their child for the tests if they want them to secure a grammar school place.

The research also provides evidence of the widespread stigmatising effect of the tests (Sel. 4.9). This stigma arises in a number of ways: between children who sit the tests and those who do not; between children who are perceived to have done well and those who have not; and perhaps most significantly between those who have succeeded in gaining a grammar school place and those who are perceived or perceive themselves to have “failed”.

The Commission has considered whether the effect of participating in the test constitutes “inhuman and degrading treatment ” which is unconditionally prohibited by Article 3 of the European Convention on Human Rights. Degrading treatment has been defined as treatment which “grossly humiliates” the individual before others. Whilst current case law from the European Court of Human Rights does not support the view that the selection procedure constitutes a breach of Article 3, many parents and children would consider that the experience approximates to a breach. It is important to note that the test for a child, in terms of Article 3, is obviously of a lower threshold than the test for an adult as adults are expected to be able to tolerate a higher level of inhumane and degrading treatment. The obvious distress and humiliation experienced by some children (taking into account the fact that the humiliation is in front of their peers), combines to raise serious concern about the State’s operation of the tests.

Equality of opportunity in the selection process

The research raises significant issues about equality of opportunity in access to secondary level education in Northern Ireland (Sel. 2.1). It demonstrates a clear link between social disadvantage and lower rates of participation in grammar schools - a finding that on the face of it amounts to a basic denial of equality of opportunity. The United Nations Convention on the Rights of the Child requires the state to “recognise the right to education and with a view to achieving this right progressively and *on the basis of equality of opportunity*, they shall in particular...encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child...” The obligation is not just to make places available (by simply offering all children the opportunity to sit the transfer procedure tests) but also to make the different forms of secondary education *accessible*. Moreover, Article 1(1) of the UNESCO Convention against Discrimination in Education prohibits discrimination both direct and indirect based on race, colour, sex, language, religion, political or other opinion, national or social origin, *economic condition* or birth. The fact that children from lower socio-economic groups are less likely to perform well in the transfer tests and consequently have a much lower chance of gaining admission to grammar schools would appear to constitute a fundamental denial of equality.

Access to grammar school places is analysed with reference to socio-economic status, religion and gender (Sel. 2.1). It is difficult to assess the impact on other individuals and groups as no evidence is presented in the report and, in fact, does not appear to be publicly available (if it is officially collated). For instance, it is unclear whether other children such as Travelling children, those who attend Irish-medium primary schools, children with disabilities or children from ethnic minorities are disadvantaged in any way in the transfer procedure tests. It is the Commission's opinion that, whatever system is in operation, information on participation, performance and post-primary destinations should be collected under the internationally agreed heads of discrimination (and certainly under the categories identified in section 75 of the Northern Ireland Act 1998, which requires designated public authorities to promote equality of opportunity). It is only by monitoring access in this way that structural inequalities can be identified and measures put in place to address any inequities which exist.

Equality post-selection

The research indicates that, other things being equal, attendance at a grammar school adds almost 16 GCSE points to a pupil's achievement at age sixteen (Sel. 3.1). This is described in the report as the "grammar school effect". Although there are various factors which contribute to this, the result is an apparent breach of Article 1(1) of the UNESCO Convention against Discrimination in Education, which includes within its definition of discrimination "the subjection of a person or group to education of an inferior standard". Moreover, Article 4 of the Convention requires the state to ensure that standards of education are equivalent in all public education institutions at the same level.

The obligation to provide both general and vocational secondary education.

Interviews conducted with secondary school principals highlight concerns about the inflexibility of the common curriculum at Key Stage 3 (Sel. 4.3). Secondary school teachers also commented upon the need for better differentiation within the system based on society's need for technical and vocational education as well as academic (Sel 6.1). There is an apparent lack of variety in the educational options open to children with differing talents and abilities at secondary level. Article 13(2)(b) of the International Covenant on Economic, Social and Cultural Rights states that: "Secondary education in its different forms, *including technical and vocational education*, shall be made generally available and accessible to all by every appropriate means." While the Commission does not wish to express a view as to whether these distinctive types of secondary education should be provided in single or separate institutions, it does wish to draw the Review group's attention to the requirement that the State should provide both academic and vocational opportunities for children in secondary level education.

The Reliability and Validity of the Test

New research into the reliability and validity of the Transfer Procedure Test *Testing the Test* (1)¹ identifies additional issues, which the Commission is concerned about. The report suggests that there is a problem in the Test's performance in terms of the numbers of candidates potentially misclassified. In addition, the report also identified that the Test procedures and reporting mechanisms were shrouded in secrecy and concluded that many aspects of the process do not meet international standards for educational testing.

The operation of open enrolment

The main research did not examine the operation of schools admissions policies and in particular the admissions criteria, which ultimately determine which children, gain admission to which post-primary schools. The Commission has a number of concerns about current admission arrangements. In particular, there are many criteria currently in use which may discriminate on the grounds of gender, race, religion or disability. More generally, the Commission is concerned about the compliance of the existing arrangements with the government's commitment to New Targeting Social Need. The Commission has commissioned research on this issue and will forward this to the Review Group in early March 2001.

Conclusion

The current system of selection at eleven raises a number of concerns from the perspective of the protection of individual human rights. The Human Rights Commission submits that whichever system is proposed by the Review Group it should operate in accordance with basic human rights principles. In particular, it should:

- respect the inherent dignity of the individual child and ensure that decisions are taken in a child's best interests;
- include the views of children and young people in any consultations which may be held on the design of a new system;
- provide children with access to education on the basis of equality of opportunity;
- enable children to develop their personality, talents and abilities to their fullest potential;
- provide children with opportunities for both general and vocational education;

¹ See J. Gardner and P. Cowan. *A Study of the Reliability and Validity of the Northern Ireland Transfer Procedure Test in Enabling the Selection of Pupils for Grammar School Places*. Graduate School of Education, Queens University of Belfast April 2000.

- ensure that the standards of education in all schools at a similar level are of an equivalent standard;
- not subject a child to any treatment which might be considered to be inhuman or degrading;
- operate in open and transparent manner; and
- aim to reduce educational inequalities.

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