LCJ's Closing Remarks

Joint NICCY/QUB Stakeholder Conference on Incorporation of the United Nations Convention on the Rights of the Child

On 17th June 2025

At Ridell Hall

I am grateful to the Commissioner, Chris Quinn, for his kind invitation giving me the opportunity to make some observations at this very worthwhile conference held in collaboration with the excellent Centre for Children's Rights ('CCR') at Queen's University, Belfast.

I confess to feeling at something of a disadvantage in making these remarks at the conclusion of this conference, from most of which I have been absent by reason of travelling back to the jurisdiction from elsewhere today, and I am therefore conscious that I may be going over what is already now well-trodden territory from today's discussions or, worse still perhaps, of talking at cross purposes. I can only beg your indulgence if I do either and seek to excuse myself on the basis that what you're hearing from me is a specifically judicial perspective. In the short time available I can do no more than share some brief thoughts on our theme.

First some personal observations. As many of you will know I practised at the Bar between 1994-2015 and during that time I undertook much work dealing with children's rights. I have to say I was well acquainted with the United Nations Convention on the Rights of the Child (UNCRC) and it featured in many of the judgments of our senior courts, and of course those of Lady Hale, even though it is an unincorporated treaty. I think our practice developed well here to embed proper participatory rights for children in court proceedings, allowing for children to be represented in some circumstances and spoken to by the judge.

I have previously gone on record concerning my longstanding belief that the law must remain an unwavering guardian for our children, ensuring that they are seen,

heard and protected. That remains a deep-seated commitment on my part and is informed by a lengthy professional career spent largely in the field of family law which I have briefly touched on.

In this regard the positives that we can all agree on concerning the UNCRC are that: 1. It is the most comprehensive and thorough statement of children's rights ever produced; and 2. It is the most widely ratified international human rights treaty in history - all but one of the 193 UN Member States are parties to the Convention.

This jurisdiction now benefits from a variety of pieces of legislation which reflect various of the principles and aims enshrined in the Convention. The Children (Northern Ireland) Order 1995 is an obvious example in which, most notably, the paramountcy principle in Article 3 of that Order – and the ancillary requirement to have regard to the ascertainable wishes and feelings of the child concerned – chime appreciably with the requirement in Article 3 of the Convention that the best interests of the child must be a primary consideration in all actions concerning children as well as Article 12, which requires that the child's views must be considered and taken into account in all matters affecting him or her.

We also have a separate and distinct youth justice system which, in similar vein, by virtue of section 53(3) of the Justice Act (Northern Ireland) 2015 requires all persons and bodies exercising functions in relation to that system – including, importantly, the court itself – to have the best interests of children as a primary consideration. On a UK-wide basis, certain statutes such as the Modern Slavery Act 2015 seek to realise some of the aims of the UNCRC within their provisions.

In her recent Children's Law Centre Annual Lecture 2025, Dr Síofra O'Leary, former President and Judge of the European Court of Human Rights, was able to illustrate how Strasbourg case law flowing from the European Convention on Human Rights has evolved to better reflect the needs, rights and participation of children, despite that Convention's original adult-focused framing. Her lecture examined key issues such as surrogacy, childcare and adoption, domestic violence, legal representation and more recent climate change cases.

All this is encouraging as far as it goes but we must, of course, continue to reflect on what remains outstanding and how the most vulnerable members of our society can best be protected and have their rights properly vindicated as we move forward. Hence the great value of today's deliberations. It is right to acknowledge the invaluable ongoing academic work of those in the CCR at QUB and the marked influence which that has had on the approach taken by government. CCR's research directly informed the passing of The Children's Services Cooperation Act (Northern Ireland) 2015, which now places a statutory duty on all government departments and public bodies in Northern Ireland to collaborate in delivering children's services. That legislation addressed the barriers to effective government delivery helpfully identified by Bronagh Byrne and Laura Lundy.

The articles of the UNCRC are, of course, wide-ranging and have a more comprehensive reach than the European Convention, covering areas including health, housing, social security, education, leisure and play, child protection and welfare, criminal justice, international protection as well as access to information and participation in decision-making. However, there is an old saying that 'fine words butter no parsnips'. So while it may have significantly influenced certain national laws and policies affecting our children the UNCRC is not itself legally enforceable in this jurisdiction - and there's the rub…. Distinct from the position concerning the European Convention, the courts here have no power to vindicate the rights enshrined in the UNCRC and it is that gap between ratification and implementation which is the issue at hand. International Treaties, of which the UNCRC is one example, are not, to use the judicial language, 'self-executing.'

Should, therefore, the UNCRC be incorporated into UK law in a manner similar to that by which the European Convention was by the Human Rights Act 1998? Some may have made their mind up on that issue. This conference will presumably already have noted that Scotland has legislated to incorporate the UNCRC into its legal system. That was not without encountering a few bumps on the road – including a Supreme Court ruling that certain clauses in the earlier draft of the legislation were not within the legislative competence of the Scottish Parliament. The

UNCRC (Incorporation) (Scotland) Act 2024, passed in January 2024, is still very much in its infancy, having been in force for less than a year. It will be instructive to see how incorporation plays out over the coming years in that jurisdiction, which has effectively become the test ground for the UK jurisdictions and possibly also our neighbouring jurisdiction in the Republic of Ireland which has similarly ratified but not incorporated the UNCRC.

I am mindful of my judicial obligation not to stray unduly into policy territory but what I can reflect upon is the likely change in the judicial landscape brought about by the Scottish incorporation. In brief, Part 2 of the Act obliges public authorities to act compatibly with UNCRC requirements; provides that proceedings may be brought against unlawful acts under the statute; and equips Scottish courts with judicial recourse to remedies for breaches, including the ability to award damages. Questions of compatibility can also be determined by the courts.

It is too early to say what operational impact this will have on the work of the courts, but we will watch developments closely. A good deal of this is, of course, familiar territory for those acquainted with the implementation of the Human Rights Act 1998, but one significant difference is that whereas the European Convention is subject to a substantial body of jurisprudence developed centrally by the European Court of Human Rights in Strasbourg, there is no equivalent *judicial* body in respect of UNCRC. You will be aware that there is a Committee of Experts which monitors and reports on the implementation of the UNCRC and section 4 of the Scottish Act of 2024 provides that courts and tribunals '*may* take into account' the general comments, observations and recommendations of the United Nations Committee on the Rights of the Child. By contrast, section 2(1) of the Human Rights Act states that: 'A court or tribunal determining a question which has arisen in connection with a Convention right *must* take into account, *inter alia*, any - (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights…whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.'

Long before European Convention rights were domesticated here in the UK the Strasbourg Court was busy developing its jurisprudence and thereby creating judicial precedents, principles and standards to create appropriate parameters for the implementation of that body of rights. There is, we know, a third optional protocol to the UNCRC which, if ratified, would permit individual children to communicate alleged violations of rights directly to the UN Committee on the Rights of the Child. The UK Government currently appears to have no plans to sign up to this Optional Protocol but, even if it did, the Committee, which undoubtedly carries out invaluable work within its own remit, does not act anything like a court of law and that means domestic courts would be operating in a very different, largely undeveloped, landscape.

From the judicial perspective I can see that incorporation of the UNCRC, absent the creation of complementary overarching juridical mechanisms at the international level, could take courts into unknown territory and require judges to fall back a good deal more on their own resources in the relative jurisprudential vacuum to grapple with the issues coming before them. It would require them to develop a significant amount of judge-made law, more or less, from the ground up. I do not doubt the ability of the courts to rise to the challenge, but it is still sensible to acknowledge that there is a significant difference from the Strasbourg model and one that gives rise to a greater challenge.

Related to that issue is one of consistency of judicial implementation across jurisdictional boundaries. In the absence of an established body of overarching jurisprudence, there is the possibility that the courts of different jurisdictions will go at different speeds and, more pertinently, might interpret the meaning of rights under the convention in markedly different ways; and while there will often be a significant degree of judicial comity across international and jurisdictional boundaries, there remains a live possibility of divergent jurisprudence which could undermine the standing and reputation of the UNCRC. I do not suggest that these issues are insurmountable, and I have confidence in the Northern Ireland judiciary to fulfil its obligations under any legislation which might be passed either locally

here in Northern Ireland and for the whole of the UK; but if such legislation were to be in contemplation, these are issues which ought to be considered and scrutinised carefully. I daresay they have been already, and I am conscious that I am not saying anything particularly novel. The UK Parliament's Joint Committee on Human Rights reporting in 2015 on its Inquiry into the UK's compliance with the UNCRC, reported that it would 'ideally' like to see the United Nations convention on the rights of the child incorporated into UK law in the same way that the European Convention had been incorporated by means of the Human Rights Act. However, the joint committee was 'mindful that these two conventions differ considerably in how they are framed and in the mechanisms which exist to support them internationally.' Interestingly, the joint committee also opined that if 'a dedicated focus on children's rights were manifest in legislation and policy across the board, much of the debate about incorporation versus non-incorporation would become an irrelevance.' Whether such an outcome is practically achievable and whether that reasoning is persuasive will be a matter of opinion and there will be a variety of different perspectives other than the judicial one which need to be brought to bear on the issue.

I should say that I am personally committed to the training of family judges on good practice to include how we properly facilitate children within the court system. Training has involved VOYPIC and children on one occasion who told us first hand how they felt about their court experience.

The great merit in an occasion such as this is the opportunity to deliberate collectively from differing standpoints and, in dialogue, to think through all of these issues thoroughly and rigorously in order, in time, to achieve and safeguard those desired better outcomes for all children. As I have said before, we have a strong voluntary sector in Northern Ireland and specialist family lawyers and judges. Allied to that, I am confident that because of the dedication and commitment which is evidenced from both NICCY and CCR that that process of refection will continue tirelessly long after this conference in pursuit of the best interests of all children; and whatever legislative developments ultimately flow from policies formulated in

Westminster or Stormont, the Northern Ireland judiciary will stand ready and willing to play whatever part is asked of it.

Thank you.