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# Getting the 'Right' Youth Justice

...engaging with the findings of  
the review of the Youth Justice  
System in Northern Ireland

Youth Justice: Our Vision  
Edel Quinn, Policy Manager, Include Youth

Conference  
**REPORT**

## Youth Justice: Our Vision Edel Quinn, Policy Manager, Include Youth

Edel has worked for Include Youth since 2002. As Policy Manager, she is responsible for all aspects of Include Youth's public policy work.

She has a particular interest in children's rights, youth justice and policing, youth employability and genuine participation for marginalised people.

Edel qualified as a solicitor in 1996, and prior to taking up post with Include Youth, worked in the Northern Ireland Human Rights Commission and the Women's Sector. She has represented Include Youth in Geneva at the United Nations Committee on the Rights of the Child, on the Bill of Rights Forum Working Group on Criminal Justice and Victims, and formerly sat on the Executive Committee of the National Association of Youth Justice and Children's Law Centre. She currently is a member of the Children and Young People's Strategic Partnership's Sub-group on Children, Young people and Offending.

“ Good morning everyone, I would like to also reiterate Debbie's welcome first of all to everyone this morning, we are absolutely delighted to have so many key stakeholders with us today to discuss what is one of the most important policy issues that has come across, that has been in front of us for many a year in relation to children and young people.

When we were doing a bit of last minute frantic work in the office yesterday afternoon I turned to Daryl and said I have got probably the worse job of the day to follow you guys and have you got any suggestions about what I can do and he just looked at me and went, "You'd better be good". So here goes.

I am going to talk to you this morning primarily around the content of Include Youth's submission to the Youth Justice Review. So I am going to really talk to a number of key issues within our submission and I hope people will pick up those issues and others within the submission during the day.

Include Youth believes that the process begun by the Youth Justice Review provides a once in a generation opportunity to meet the challenges which have been posed so articulately by the young people today. We are delighted to contribute to this process through the conference.

I am, as I say, going to outline some of the key recommendations, there isn't time to go through all of them today, I am going to flag up some of the essentials.

When the commitment to review youth justice was included in the Hillsborough Castle agreement. Include Youth and others immediately recognised the enormous potential, having worked with children and young people, promoting their rights within the justice system for

over 30 years. Whilst initially we had some concerns in relation to a number of process related issues, we were pleased to follow an engagement with the Department of Justice and the Assembly. The process was strengthened by a three month extension to the timeframe for the review and by an assurance from Minister Ford that the outline terms of reference would be sufficiently flexible to incorporate any changes that made sense.

We supported staff, young people and practitioners from across Northern Ireland to engage with the Youth Justice Review and were involved in a series of direct meetings with the members of the team and are delighted that two of them are with us today.

Our voices collectively together with the studied analysis of the existing research and adherence to international human rights and children's rights standards directly informed our detailed submission which was presented to the Review and contained over 60 recommendations under 13 different headings. Additionally to this process we worked in partnership with other organisations and are pleased so many are here today.

You will be glad I am not going to go through the 60 recommendations and the executive summary to our submission is in your pack and if you want a full copy there are copies available outside and also via our website.

The first theme that I am going to talk to you today about is the need to deliver a child rights compliant youth justice system. Include Youth was pleased to note the commitment to conduct a review of youth justice contained in paragraph 6 and 7 of the Hillsborough Castle Agreement and that it contained a pledge to ensure compliance with international standards, obligations and best practice. These international obligations referred to under the Hillsborough Castle Agreement, include a body of conventions and standards to which the UK government has ratified and committed to uphold, including amongst those the United Nations Convention on the Rights of the Child.

Include Youth made a number of recommendations in relation to ensuring a child rights compliance system. The UN Committee on the Rights of the Child, which monitors UK government compliance with the UNCRC, has repeatedly criticised the government on several aspects of its approaches to youth justice, many of which I will refer to in the course of the presentation.

Article 3 of the UNCRC states that "In all actions concerning children, the best interests of the child shall be the paramount consideration". Similarly Article 3 of the Children (Northern Ireland) Order 1995 which deals with children in need states that the child's welfare shall be paramount.

In sharp contrast however, the youth justice system in Northern Ireland prioritises public protection and crime reduction over the best interests of children. Article 53(1) of the Justice

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(Northern Ireland) Act 2002, establishes that the principle aim of the youth justice system is to protect the public. Why are we treating these children in the justice system differently? Include Youth has recommended that Article 53 be amended to state that "The principle aim of the youth justice system is the protection and promotion of the best interests of the child".

Also in the context of child rights, I want to look at the issue of early intervention. Local and international research consistently demonstrates that children and young people are more likely to be involved in offending behaviour if they leave school early, have special needs, live in poverty, have truanted or been excluded from school, have spent time in residential care, have had difficult experiences within their family context, have drug and alcohol problems or suffer from physical or mental ill health, the list goes on. But in Northern Ireland, there is the additional dynamic of the legacy of the conflict and the persistence of formal and informal punishments within a society deeply divided by sectarianism. These significant interconnected issues require a whole child approach which involves cross-governmental responsibility and acknowledges that a multidisciplinary and coordinated approach between Social Services, education, employment, health, housing and youth service providers together with police, community and voluntary sector agencies, is essential. Consequently Include Youth has recommended a youth justice system that is built on early intervention, the provision of universal services, prevention services and services which are diversionary. We also recommend that responsibility for youth justice be transferred to a child care based government department.

I want to turn next to look at the issue of participation. Include Youth has done a lot of work around supporting young people to be involved in participation in the context of policy development, however, for this morning's purposes I want to look at the participation in the context of criminal justice.

The structures and processes within the criminal justice system are complex and challenging particularly for children and young people. It is essential that necessary steps are taken to ensure that all children are aware of their rights, have necessary information, support and access to services, including independent advocacy and full recourse to the law including access to court to enable them to vindicate their rights. Respect for and an understanding of the complexities of the lives of children, their families, through all stages of the criminal justice process is imperative and requires training of police officers, court officials, members of the legal profession and judiciary amongst others.

The next I want to look at the issue of minimum age of criminal responsibility. The age at which we hold children criminally responsible is a very emotive issue, and one on which there is a wide range of diverse opinions. Include Youth believes that it is neither acceptable nor effective to have children as young as 10, that's children in primary six, being subject to the full rigours of the law for behaviours which may have caused harm to others. The age as it

currently stands is out of step with international child rights standards and other social responsibilities. Include Youth as recommended raising the age of criminal responsibility to 16 in line with evolving capacities and other social responsibilities. (I am expecting a pretty lively debate in the minimum age of criminal responsibility workshop this afternoon).

For any child who becomes involved in troublesome behaviours there will be consequences but what is important is to ensure that the child is supported to face those consequences and accept responsibility in a way which they understand and a way which they can meaningfully be involved and a way in which it helps and stops and ensures that they stop the behaviour which is destructive to both themselves and to others.

Crucially it is vital that the child is dealt with by a system which neither criminalises or stigmatises the child but rather supports them and their family to address the underlying causes of their harmful behaviour, enabling them to accept responsibility in a meaningful way and where appropriate undertake restorative processes with the victim, preferably through a family group conferencing model in the community.

Include Youth recommends that this system be administered through a social care framework through DHSSPS, delivered where possible with community settings. We have further recommended that the current youth justice budget for provision of services for all children under the age of 16 be redirected to a ring fenced budget within DHSSPS.

Safeguards are essential under this new proposed system to raise the age of criminal responsibility, to ensure that children have the right to independent advocacy services and formal judicial processes, particularly in cases where responsibility is disputed and where proposed responses to the child's alleged behaviours involve deprivation of their liberty.

The very small number of children who commit serious and harmful acts are clearly profoundly troubled with significant mental health and emotional health needs. It is precisely such children that require welfare based responses rather than punitive interventions.

It is also important that in any policy decision to raise the age of criminal responsibility that this is not portrayed as an undermining of the interests of victims, quite the reverse. The European network of Ombudsmen for Children recognised the interests of children who offend and victims are not mutually exclusive concepts and states that victims' interests are not served by pursuing policies that failed to rehabilitate offenders or tends to make them more prone to offend and possibly more violent.

I next want to turn to look at the issue of diversion from the formal system, which was one of our key areas of the recommendations within our submission.

The term "diversion" has many interpretations but Include Youth has defined it as diversion

from the formal criminal justice system. That is diversion of children from all engagement with statutory criminal justice agencies and processes prior to them being convicted of committing a criminal offence.

Include Youth fully endorses and has been a long time advocate for the use of diversionary and restorative practices. However, from experience based on feedback from children and practitioners who have supported through processes, Include Youth considers that some of these current processes within the formal system are not diversionary as envisaged by the Criminal Justice Review which first recommended in the context of the Peace Process, the issue of moving towards diversionary measures for children and young people.

The current processes we submit raise issues regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance.

For the purposes of this presentation I am going to focus primarily on diversionary youth conferencing, and I would point out that this disposal does not amount to a criminal conviction however it remains on a child's record for two and a half years. Last year in Northern Ireland 861 diversionary youth conferences were administered by the Youth Justice Agency, over half of all the youth conferences agreed.

Include Youth has raised concerns in relation to a number of areas and I am going to briefly go through some of them now. First the impact of delay. There is no doubt that delay is an issue that pervades all aspects of the criminal justice system. As has been evidenced by successive independent inspections by oversight bodies, it can have a devastating impact on outcomes for children and young people and has implications an overall cost effectiveness of the system. For example, most recent figures in relation to diversionary youth conferencing reveal that it takes an average of 273 days, (that's nine months) from the date of an offence to the date of approval of a diversionary youth conference plan. Also an average of 91 days, (that is three months) from the date of referral to the Youth Justice Agency to the date where the discretionary youth conference plan has been approved. Such time frames are unacceptable and militate against successful outcomes for all parties involved, for children and for the victims.

We are concerned in relation to conferencing that it is focused on young offenders coming to terms with and repairing harms to victims and is not primarily geared towards tackling young peoples underlying problems and needs. We are also concerned in relation to victim participation in conferencing and the high levels, apparent high levels of indirect and corporate victims. We do welcome the Youth Justice Agency's review of this aspect of the process.

Recent international evidence suggested conferencing can be a mechanism for net widening and simply a bolt on to the criminal justice system.

It is also questionable whether many young people are in a position to give informed consent and have the capacity to participate in conferences and in many other aspects of the criminal justice system but this is almost a prejustice system issue and we are concerned they are not fully able to participate in these processes, to the actions that are agreed and the conditions they are signed up to, to adhere to. This situation is exacerbated when children and young people may present with mental issues or learning difficulties.

As I said earlier on at the start, a conference can stay on a child's record for up to two and a half years, details of this record can also be disclosed, even though it is not a conviction. This has the potential to be detrimental and have a disproportionate longterm negative effect on the life chances of the child. Include Youth believes that the process is excessive and disproportionate in managing challenging behaviours in young people which the Youth Justice Agency itself has defined as generally at lower intrinsic risk of reoffending.

So having laid out some of the concerns, as you would expect, Include Youth in our response made some suggestions in relation to solutions: There is a clear argument for the reintroduction of a speedier, less intrusive, less bureaucratic process where children have minimal contact with the formal criminal justice system, and are sign posted to necessary provision within the community. We suggest reinvesting resources currently expended on diversionary youth conferencing into community based interventions. There are existing and previous multiagency diversionary processes that could better deliver for children who are involved in low level, nonserious offending behaviour, that would divert children from the formal youth justice system as early as possible. These include the child intervention panels currently being piloted by the PSNI in the South Eastern Health and Social Care Trust area. Other processes are located in the community such as the family support hubs currently highlighted in the Western Trust area and the integrated services model currently being operated across West Belfast and the Shankill.

These processes would take a holistic family and community based assessments and divert young people to appropriate services which naturally would include community based restorative justice projects where behaviours and its consequences can be examined.

Include Youth believes that in any discussion on diversionary measures there is a positive role for community based restorative justice based programmes in Northern Ireland which have the support and trust of communities and victims as well as statutory agencies and the success of existing programmes has been significant in a society emerging from conflict. One positive example is the street by street project within East Belfast Alternatives that we have heard something about already this morning.

Include Youth believes that we should shift the focus of the highly skilled resources and staff within the Youth Justice Agency from these young people who are involved in low level

behaviours to working in an intensive way with the young people who are involved in serious and persistent offending.

The next issue I want to talk about is custody. International children's rights and human rights standards are clear, the UN Committee on the Rights of the Child has been unequivocal in its successive examinations of UK government. Successive independent inspections and reports from oversight bodies over many years have left no one in any doubt. Radical changes need to be made to the current system to bring it into line with children rights standards, to improve outcomes for children and young people, to improve effectiveness and sufficiencies within the system including reducing reoffending rates thereby contributing to a safer society for everyone.

It is clear that the standard that custody be used as a measure of last resort for the shortest period of time for use only with those who present a risk of harm to the public is not happening. It is essential that the use of remand is reduced drastically particularly for looked after children and for 16 and 17 year olds who maybe not subject to a Care Order but who do not have the necessary family support and can't get a bail address perhaps because of their challenging behaviours.

In 2009 and 2010, seven out of 10 of all admissions to the juvenile justice system were either court based, court ordered or PACE remands. Between 2005 and 2009 four out of five of all children remanded to custody were considered not to be a risk to the community and eligible for bail. Additionally over one third of admissions to the juvenile justice centre are looked after children, and generally for offences that would not warrant custody. This is a hugely disproportionate number given that approximately 0.4% of the general population of children are found in the looked after system.

The question arises as to why these children were remanded in the first place. Their presence is disruptive to the young people's lives, breaches their right to liberty, and is a huge waste of public funds. Appropriate accommodation must be found. We fully endorse the recommendations the Northern Ireland Law Commission made in dramatically reducing numbers of children remanded to custody. There must be a suitable provision in the community for young people who await sentencing and a statutory presumption in favour of bail.

I want to look now at the issue of under 18s. Currently the detention of children at Hydebank Wood is wrong and must be ended as a matter of urgency. Include Youth recommended in its submission a transitional action plan be put in place with a clear timetable for completion with cross-departmental support sanctioned and agreed at executive level.

There is space to accommodate the small number of young people in Northern Ireland who

need to be detained because they pose a significant harm to members of the public. Given that Woodlands Juvenile Justice Centre is a customised built facility only opened in 2007, it is not unreasonable to expect it should be with a certain degree of haste be possible to make the necessary arrangements required, building and staff wise, to make it fit for purpose to house all children in Northern Ireland who the courts have determined necessary to be detained within a secure criminal justice setting.

We do appreciate that some of the young person we are talking about may present with very challenging behaviours but we believe that these are the very children for whom the Juvenile Justice Centre was built, to provide a safe, stimulating and supportive environment, one that works to improve outcomes including reducing reoffending rates.

The process of moving children from Hydebank Wood to the Juvenile Justice Centre does not nor should it be a protracted process, this requires political and administrative will.

It is clear that the standard that custody be used as a measure of last resort for the shortest period of time for use only with those who present a risk of harm to the public is not happening. It is essential that the use of remand is reduced drastically particularly for looked after children and for 16 and 17 year olds who maybe not subject to a Care Order

During the transitional phase Include Youth has recommended that any young people who remain whilst the process is being sorted out should be entitled to full implementation of their rights which is currently not happening. This should include full access to their right to health care, including mental health services, education provided in a manner consistent with international standards and independent advocacy and others most recently identified by the Independent Monitoring Board's report.

The next issue that I want to talk about now is policing: In regards to policing, as has been mentioned earlier by the young people, generally the PSNI are the first point of conflict for children in conflict with the law. They are defined and often described as one of the main gate keepers in the criminal justice system.

Include Youth suggests that the focus should shift to one of the police being gate keepers out of the system. We believe it is vital that the review of youth justice examines thoroughly current legislation, policies and practice regarding policing children and young people pursuant to paragraph 6 and 7 of the Hillsborough Castle Agreement and make the necessary arrangements for change.

The publication of the Northern Ireland Policing Board's detailed thematic review of children and young people in January 2011 should be of enormous benefit and guidance to the Review Team, as it sets out the issues facing children and young people and the wider community in respect of policing and justice. There are over 30 recommendations in that report and many of

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our suggestions to the Review Team on the issue of policing are based on the premise that the PSNI should urgently implement the recommendations of the Policing Board's thematic report.

You will see a number of other recommendations on this slide in relation to policing such as the use of stop and search powers, the release of images of children and the use of ASBOs, details of these are included in the executive summary which is in your pack.

In conclusion, I have only briefly touched on the issues covered in our submission but hopefully I have given you a flavour of some of our key expectations and aspirations for the youth justice system in Northern Ireland. Hopefully these and other issues will be addressed throughout the day.

Include Youth's submission was based on a realistic and genuine expectation that Northern Ireland can have a youth justice system which meets the need of children and young people and communities in a way which complies with international obligations and best practice. If we are serious about making Northern Ireland a safer place for children, families, communities and victims, then getting the right youth justice system is essential. Thanks for listening. ””