



**INCLUDE YOUTH RESPONSE
TO NORTHERN IRELAND LAW COMMISSION CONSULTATION ON BAIL IN
CRIMINAL PROCEEDINGS**

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Introduction

Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and policy awareness – both locally and nationally.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

In addition, Include Youth runs the YOYO Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk, and meets on a quarterly basis.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

Include Youth very much welcomes the publication of the Northern Ireland Law Commission consultation paper on bail in criminal proceedings. We welcomed the opportunity to be involved in the pre-consultation phase and are confident that many of the issues raised by us and the young people we work with are reflected in the consultation paper. We have read the paper in considerable detail and have drawn on our learning from our substantive direct work with young people to inform our response.

This consultation, and the focus it places on the situation regarding children and young people, is one step towards developing a child's right compliant justice system in Northern Ireland. As such it forms an important component in the development of thinking on how the criminal justice system in NI can be made more compliant with international children's rights standards and obligations. We welcome the efforts the NI Law Commission has made in engaging with young people in the consultation and we have enjoyed working in partnership with the consultation team to this end. Our response will focus on young people's views on the subjects raised in the paper.

Considerations concerning children and young people

Q 40: The Commission invites the views of consultees on whether the test for the remand of children and young persons who have been charged with offences but not convicted should be amended to incorporate a single test which would be applied by both the police and the courts.

Include Youth are supportive of the suggestions that the test for the remand of children and young persons who have been charged with offences but not convicted should be amended to a single test which would be applied by police and courts and believe that there is a need for consistency of approach with regard to how the various parties within the decision making process apply the rules to children and young people.

Some of the young people we spoke to expressed their frustration that the police appear to have an influence over bail decisions, and this can result in some young people being victimised or feeling that they are not being given a fair chance.

"Cops always oppose my bail, no matter what I've done. And even if the judge gives me bail conditions. With conditions they torture me even, calling at my door 4 and 5 times a night."

Q 41: The Commission seeks the views of consultees on whether a reformed test for the remand of children and young persons by the police and the courts should closely mirror the grounds for the refusal of bail laid down for adults, subject to appropriate modification to reflect the age of the young person.

Include Youth believe that there should be a specific test tailored for children for the reasons outlined below.

A reformed test for the remand of children and young people must be tailored to suits the needs of children and young people. There must be more flexibility built in to the test to ensure that the background and individual circumstances of the child are taken into account.

Include Youth has long argued for a deeper understanding of the complexities of the lives of the children and young who come into contact with the criminal justice system.

Many of those young people who come into the criminal justice system have a depressingly similar set of complex and unmet needs. Many experience poor educational attainment (due to a disability or special educational need, truanting or exclusion from school), misuse drugs or alcohol, engage in

unsafe sexual behaviour or have been in residential care. They are often survivors of childhood traumas such as sexual or physical abuse, domestic violence or living in unsafe neighbourhoods. Mental ill health is often undiagnosed or inappropriately treated. In most cases, this leads to young people who feel constantly disempowered, disengaged, unable to make their voices heard or to demand the right to appropriate provision.

Similarly, there are clear links between young people living in socio-economically deprived areas and their chances of coming into contact with the criminal justice system. For this reason we would recommend that the NI Law Commission make recommendations regarding the test for remand which will make specific reference to the background and personal circumstances of those children who come into contact with such proceedings.

The test for bail should conform to international child and youth justice principles within the framework of children's rights standards. There are several relevant international standards which are applicable to children and young people and in particular for children and young people within the criminal justice system, namely, the UNCRC, the Beijing Rules, Riyadh Guidelines, Tokyo Rules and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Include Youth recommends that all policies and services, including the youth justice system, must be fully compliant with international human rights and children's rights standards, in particular with the UNCRC. We have attached Include Youth's paper on Relevant International and Human Rights Standards and Commentary on Youth Justice, to this consultation response.

The test should be compliant with principles as laid out in human rights instruments, in particular with the UNCRC and include consideration of the best interests of the child and the principle that detention should be a measure of last resort and for the shortest appropriate period of time.

Include Youth would question the use of detention solely for care or protection issues. We are supportive of the system in Scotland where the use of pre-trial detention for children is rare. Bail fostering and mentoring schemes could be utilised to ensure that children are not remanded on welfare grounds.

Q 42: The Commission invites the views of consultees on whether bail legislation should prohibit the remand of young persons solely on the grounds of lack of accommodation.

Include Youth emphatically agree that bail legislation should prohibit the remand of young persons solely on the grounds of accommodation. It is unacceptable that so many children are remanded in custody simply as a result of their accommodation status. It is even more shocking when such a high proportion of young people remanded are "looked after".

We understand the challenges faced in finding suitable accommodation for young people but we would urge that other ways are found to accommodate young people in this situation that would enable them to be granted bail. We know that this matter is made more difficult when, as is so often the case, parents and carers are unwilling to accommodate the young person.

Many of the young people we work with have been refused bail in the past because they could not provide a suitable bail address. The young people feel strongly that they should not be denied bail because they do not have an address. Many of the young people have to wait a number of weeks

before an address is secured and as a result spend a considerable length of time in custody and are frustrated that they are not given more information about what is happening. Some of the young people recommended that there should be more bail hostels.

“And there should be more bail hostels – I can't get out of here [YOC] because I've no address, nowhere to go.”

“Just an address for a start, to have somewhere to live. You might need one to get out too – a bail house or hostel.”

There is an acknowledged link between state care and custody and it is essential that all decisions taken throughout bail proceedings take this link into account.

While children and young people in residential care may behave in challenging ways, it is clear that currently custody is not being used as a last resort - children who are ‘management problems’ (rather than ‘offenders’) are being moved from residential care, via PACE, to the Juvenile Justice Centre (JJC). A full, announced inspection of the JJC undertaken in November 2007 raised concerns about the profile of the children detained there, and the inappropriate use of custody for children from care:

“As in previous JJC inspections, Inspectors’ main concern arises from the high turnover rate of children, and the fact that a disproportionate number of children come directly from residential care placements. These are longstanding features of juvenile custody in Northern Ireland.” (CJINI, 2008)

Children and young people can be placed in custody under the provisions of the Police and Criminal Evidence (Northern Ireland) Order (PACE). These admissions are generally for 1 – 2 days, ensuring that children are held securely pending a court appearance.

We are concerned that they now represent an increasingly high proportion of admissions. For example, of the 655 admissions to the JJC between January 2006 and October 2007, 48% were PACE placements. 42% of these children were subsequently released at court which calls into question the value of placing them in custody in the first instance (CJINI, 2008).

There are undoubtedly issues to be raised regarding the rules of children’s homes and their willingness and ability to accept and manage challenging young people. The decision which is often taken to move the challenging young person out of the home, can lead to a child or young person being criminalised or being put on remand.

We would like to see this section of the paper make reference to the difficulties faced in placing children in suitable accommodation and as a result the challenge this presents to those making decisions regarding bail. Programmes should be put in place which will stop the inappropriate placement of children and young people in custody due to the fact that there is nowhere else for them to be placed. We acknowledge that this goes beyond the remit of the NI Law Commission but we would urge the Commissioners to use their influence to draw attention to the current problems surrounding finding suitable accommodation for young people in this situation.

Q 43: Consultees' views are sought on appropriate administrative arrangements which may be devised, possibly drawing on existing models and/or resources, to address the issue of accommodation for young persons on bail.

We remain concerned that children and young people are being held in custody unnecessarily. We would recommend that there is much more cross departmental working on the issue of accommodation for children and young people. This issue cannot be addressed without drawing on support and resources from other government departments, and in particular from the DHSSPS and DSD. .

We applaud work already undertaken between NIHE and DHSSPS with regards to protocols for 16 and 17 year olds who present themselves as homeless. This added to the development of accommodation for older teenagers such as supported lodgings and intensive hostels has meant that there are more appropriate responses to young people who are homeless. We are therefore more optimistic that solutions are currently in place to offer suitable bail accommodation for young people. We urge the criminal justice system to develop the necessary partnerships with the social care agencies to support and access these services.

Q 44: The Commission is of the preliminary view that the definition of the 'place of safety' should be reconsidered, deleting references to a 'hospital or surgery' which arguably serve no useful purpose. Do consultees agree?

Include Youth agree that unless a child or young person requires medical treatment than there is no reason for them to be accommodated in a "hospital or surgery", therefore we have no objections to deleting these locations as designated places of safety.

Q45: The Commission invites the views of consultees on the inclusion in bail legislation of provisions designating where children and young persons on remand can be detained.

Include Youth are of the opinion that legislation should include a provision on where children and young persons can be remanded.

Q46: Are consultees of the opinion that children should never be detained in the young offenders centre?

Include Youth Strongly believe that children should **never** be detained in Hydebank Wood Young Offenders Centre.

Article 37 of the UNCRC includes the right of non convicted children to be detained separately from those who have been convicted, the right to maintain family contact; and the right to access the school curriculum. There is widespread evidence to demonstrate that this requirement is currently not being met.

As professionals working closely with young people in the criminal justice system we know that children are not currently treated in a manner that pays due regard to their age, understanding and needs and they are not being helped to reintegrate into society.

We continue to have major concerns about the welfare of 16 and 17 year olds held in Hydebank Wood YOC.

Provision has been included in Article 96 of the Criminal Justice (NI) Order 2008 to allow the Secretary of State to direct young people aged 17 to be held at the JJC rather than at Hydebank Wood YOC. A recent report from CJINI on mental health and the criminal justice system in NI stated that there are around 18 juvenile males at any time accommodated in a separate wing of Hydebank Wood Young Offenders Centre. CJINI has repeatedly commented on the very poor regime offered to juveniles at Hydebank Wood YOC (CJINI, 2007; 2010).

We would be particularly concerned about the vulnerable mental health of some of the children and young people who are remanded to the YOC. As previous CJINI reports and our own report into the YOC have shown, the current regime is not equipped to deal with vulnerable children and young people with complex mental health needs (Include Youth, 2009). Placing these children in the YOC on remand, without the necessary mental health services being in place will serve to exacerbate the children's' problems and could have very detrimental consequences for their welfare.

Our interviews with young people in the YOC between April and July 2009 (verified in February 2010), has shown that meeting the mental health needs of the young people remains a challenge and some of the young people talked about the long waiting time to talk to a trained professional.

The young people talked about their experiences of staff reactions to suicidal feelings. In many instances the young people are restrained and put in a 'safe' room. However, the young people were clear that this response is not always the most beneficial and sometimes they would favour a more supportive and adaptive approach, which would address their needs.

"If you say to staff at night that you're suicidal, they put you straight down the block."

"They put you down on the block because there's no way you can kill yourself down there, you're in a room with nothing, so there's no way for you to hurt yourself – but you feel worse."

"That's the treatment for everything in here, lock you up."

The young people clearly feel their mental health needs are not being met. These are extremely vulnerable young people who need support and help to deal with their negative feelings. We are deeply concerned that current practice is doing nothing more than preventing self harm but is not addressing the root causes of these feelings and issues.

Despite some improvements made at the YOC, the most recent report for 2009/2010 from the Independent Monitoring Board (IMB) clearly indicates that the rights of children and young people held at the YOC are not being met.

'Despite genuine attempts to put in place special measures including supervision arrangements, it is the view of the IMB that there are fundamental flaws in the shared site at Hydebank Wood that make it very difficult to sufficiently focus on the distinct and varied needs of young men, boys and women.' (IMB, 2011:6)

Include Youth believe that deprivation of liberty, including pre-trial detention should always be used as a last resort and that children shall be detained separately from adults.

Include Youth are not alone in their call to address the use and length of pre-trial detention. The recently published Council of Europe Child Friendly Justice Guidelines has also made a similar call (Council of Europe, March 2010; Council of Ministers of the Council of Europe, November 2010). The UN Committee on the Rights of the Child have also made recommendations on this issue (UNCRC, 2008; UNCRC 2010).

Include Youth remain very concerned about the treatment of children and young people in detention in Northern Ireland.

In our view the needs of young people on remand would be better met at the Juvenile Justice Centre.

Q 47: Are consultees persuaded that legislation providing for secure accommodation for young persons on remand is necessary?

Include Youth recognises the small number of 10-13 year old children in custody whether on remand or sentenced and applauds the work undertaken by the Youth Justice Agency to keep the numbers at these low levels. However, we do not believe that these provisions of the Criminal Justice Children (NI) Order 1998 as amended in 2002 should be repealed. We believe that criminal justice accommodation is not appropriate for these children and they should be looked after within current secure accommodation for 10-13 year old children if necessary.

Q 48: The views of consultees are sought regarding the role which should be played by responsible adults during a child's period on bail.

We agree that the role of a supportive adult can be critical in supporting a young person to comply with bail conditions. However, we would welcome more support being offered to the responsible adults to help them in this important role.

Q49: The Commission is of the provisional opinion that the power to take a personal recognizance from a child should be abolished in respect of police and court bail. Do consultees agree?

Include Youth agree that the power to take a personal recognizance from a child should be abolished in respect of police and court bail. This power is inappropriate for children and is not in keeping with children's rights compliant justice standards and obligations.

Q 50: The Commission seeks the views of consultees on the desirability of developing detailed guidance for bail decision makers concerning the imposition of bail conditions on children.

Include Youth would strongly support the development of detailed **statutory** guidance for bail decision makers concerning the imposition of bail conditions on children.

We would welcome steps being taken to inform bail decision makers of the impact and effectiveness of various bail conditions on children and young people.

This guidance should take cognizance of what children and young people's experiences are of the bail process and in particular what impact the conditions have on them. Those making decisions about bail should be able to make a judgement about what conditions are appropriate and effective.

Young People's Views on Bail Conditions:

The reality is that many young people see the bail conditions as a challenge and will do everything they can to try and flout them. They are seen by some young people as something to get around rather than comply to.

"They tell you not to do all these things and it's like... this BIG RED button sitting in front of you, just tempting you, daring you to push it."

"We're kids, if you tell any kid not to do something, he'll just go and do it."

Some young people claim that they have received bail conditions which they can never meet and they feel they are being set up to fail. They find it particularly hard to comply with conditions on alcohol consumption, curfews and those restricting access to their friends.

"Too many conditions on you."

"And stupid conditions."

"They're unrealistic."

"Curfew is the worst thing to get."

*"I had to be in 7 to 7 – that's f***ing terrible."*

"Bail's not supportive – bail's just setting you up to fail."

Many of the young people talked about police involvement in ensuring they keep to their conditions, claiming that the police are unnecessarily severe in how they impose the conditions.

"Even [named judge] said they shouldn't be doing that."

"They do that to me too, call at the door all hours of the night."

"They [police] torture me, but a tag would keep the cops away from door all the time. It just makes you angry. I wouldn't mind if it was twice a night, but they torture me."

Young people were concerned that constant visits by the police to young people's homes attracts attention from paramilitaries and as a result puts them in an extremely vulnerable position which threatens their safety and well-being.

"There's [paramilitaries] in my street and the police were at the door every night. They [paramilitaries] asked my Ma why and she had to make up an excuse. If they [paramilitaries] know I'm on bail for burglary, I would've got my arms and legs broke. The last time they [paramilitaries] said the next thing I do, even if it's something stupid, I'll get put out of the community."

Other young people talk about the impact the conditions have on their emotional and mental health.

Young people were of the opinion that breach of bail should not constitute an offence. This is particularly true for those young people who may be found to be not guilty of the initial charge, but then if they are unable to meet bail conditions, they end up with a conviction anyway.

What the Guidance should include:

It is essential that judges are able to access relevant information with regard to the background and personal details of each young person on which they make decisions. Include Youth believe that it is vital that those making decisions have detailed information from relevant people working with the young person. An assessment should be made of the young person's situation which would involve input from relevant professionals and gave the judge a basis on which to make an informed decision.

Consideration should be given to the education, health, personal development, employment and family needs of the young person when bail conditions are placed.

Include Youth would support the application of children's rights compliant youth justice principles when applying bail conditions.

Q 51: Further, if consultees regard such guidance as desirable, views are sought on whether such guidance should have a statutory basis.

As stated above Include Youth believe that any guidance should have a statutory basis. There must be as little ambiguity as possible on the services that must be in place and decision-making processes to ensure that bail decisions are made in the best interests of children as well as the protection of the public. The lack of statutory guidance has, we believe resulted in the abdication of responsibility of both criminal justice and non-criminal justice agencies.

Q 52: The Commission invites views on whether a statutory duty should be imposed upon decision makers to make efforts to ensure that young persons understand bail decisions and conditions.

The Northern Ireland Court Service has undertaken some work to raise public awareness about its role and operation, much of which has been targeted at young people. It is clear, however that young people who appear as defendants often feel alienated. Many young people do not fully participate in the Court procedures, or understand what was happening:

It is our experience that many children and young people do not fully understand many criminal justice processes including bail decisions and conditions. Many young people have never had bail and subsequent bail conditions explained to them. As a result many are unaware of what bail conditions they have signed up to. Some young people claim that the solicitor agrees the conditions and tells them to take whatever conditions they get.

"Get someone there to help explain what's happening. Your solicitor does some of it, but you need someone to do every wee bit – like a youth worker or someone."

"Can't understand what's being said. It's all big, stupid words – especially the Judge."

"I was about 12. You just sit there and say nothing. And they don't speak to you anyway, just to your solicitor. They only ask you, "Do you understand the charges?" And you just say "Yes." even if you don't."

"You understand nothing, cos of all the pure big words they use – you just sit there and it goes in one ear and out the other."

"They [judges] go "Blah, blah, blah," and you sit there not knowing a word – it's like in a different language. Then they ask you, "Do you understand?", or "Will you do it [offence]again?", and you

just sit there nodding or shaking your head, whatever you think you're meant to do, then they go on again, "Blah blah blah blah."

"It might as well be Chinese, what the judges is saying, it means nothing."

"You're not sure what you're meant to do"

*"I just sat there,, with them all talking s***. I was just sitting there saying, "Am I free to go then?" in a wee quiet voice. I didn't know what was happening."*

It is clear that due to lack of understanding some young people may accept bail conditions and not be fully aware of the consequences of their decision.

The profile of many of the young people who enter the juvenile justice system indicate the high levels of special needs and below average literacy level amongst those held in custody. For example, of the 30 children in the JJC on 30 November 2007: 20 had a diagnosed mental health disorder, 17 had a history of self harm, 8 had at least one suicide attempt on record, 8 were on the child protection register, and 14 had a statement of special educational needs (CJINI, 2008).

We welcome the inclusion of the need for children and young people coming into contact with bail proceedings to be made fully aware of what they are committing to. It is vital that they also have access to information and advice, including prompt information about their rights. It is vital that information is provided in a way which is accessible to children and young people of various stages of development. This is particularly relevant given the high number of young people with special educational needs, disability and low levels of literacy coming into contact with the criminal justice system.

Coupled with the need to ensure information is accessible for young people, is the need for young people to be enabled to participate more effectively in the proceedings. This is in line with existing children's rights compliant youth justice standards.

Q 53: Consultees' views are invited on the desirability of expanding bail support for young persons, building on existing programmes and/ or resources.

We are supportive of the expansion of bail support programmes.

The young people we work with agree that bail support is vital to help them comply with conditions. They are requesting support to deal with issues regarding drugs and alcohol abuse and mental health issues. Some of the young people also requested that support be made available to parents and carers to help them assist in complying with bail conditions. Accommodation issues persist as a recurring area of concern for young people. Any bail support programme should address the young persons housing needs.

"And there should be more bail hostels – I can't get out of here [YOC] because I've no address, nowhere to go."

"Just an address for a start, to have somewhere to live. You might need one to get out too – a bail house or hostel."

Conclusions

We welcome the NI Law Commission's emphasis on the situation of children and young people with regard to bail proceedings. We were delighted to contribute to the pre-consultation phase and

commend the Commission for the work they have done to highlight the specific needs of children and young people, within the consultation paper.

We find it unacceptable that there are high numbers of children and young people on remand being held in custody settings. There are too many young people under PACE (NI) admissions being held in the juvenile justice centre. We remain concerned about children and young people being held on remand in the YOC. This is not the best place for these vulnerable young people to be held. We are hopeful that this paper will highlight the lack of justification there is for the remand of many young people who ultimately are never charged with any offence.

Include Youth are calling for a juvenile justice system which adheres to child friendly justice guidelines and places the rights of the child at its core. The current situation with regard to bail proceedings would suggest that these principles are currently not being met. Pre-trial detention is not being used as a measure of last resort. We hope this consultation will go some way to addressing this oversight and we look forward to working alongside the NI Law Commission and all other relevant agencies to developing a child rights compliant bail system.

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