

include YOUTH

**Response to the Consultation on the Report on the
Review of the Youth Justice System
in Northern Ireland**

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1. General Comments

As an organisation which exists to promote the rights and best interests of and best practice with young people in need or at risk, Include Youth has long advocated for an overhaul of the youth justice system in Northern Ireland, believing it to be in breach of children's rights and human rights standards in a number of significant areas.

Most serious among these are the overall lack of an underpinning child rights framework, the continued detention of children at Hydebank Wood Young Offenders Centre, the low minimum age of criminal responsibility and the failure by government to locate and address the needs of children and young people in the youth justice system within the wider context of their lives.

Other areas of concern include the widespread demonisation of children and young people within our society, issues in relation to policing and children and young people, net widening by the criminal justice system, the over representation of particular groups of children and young people within the youth justice system and a systemic failure to ensure that the child or young person's Article 12 rights are complied with.

We therefore very much welcomed the commitment contained in the Hillsborough Castle Agreement in February 2010 to conduct a review of youth justice, one which would "review how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice".¹

The Hillsborough Castle Agreement on the devolution of policing and justice powers to the Northern Ireland Assembly marked a seminal moment in the evolving peace process. The commitment to a review of youth justice was a central element of this, providing as it did a 'once in a generation' opportunity to construct a youth justice system compliant with international obligations and best practice, while meeting the challenges of transition, and delivering a fair, just and transparent system for children, young people, their families and the wider communities within which they live.

The importance of addressing the needs and rights of all children and young people, but particularly those who are most vulnerable as part of the evolving peace process was underscored by the Special Representative of the Secretary General of the UN Secretary General on Children and Armed Conflict on a visit to Belfast in 2000. Addressing the centrality of children and young people's concerns to peace building he commented that:

¹ Agreement at Hillsborough Castle Section 1 paragraph 7

“All key actors responsible for developing post-conflict peace-building programmes should make the rights and protection of children a central concern in their planning, programming and resource allocation.”

He appealed to political leaders *“to address the basic concerns of children in Northern Ireland, particularly social and educational integration, youth unemployment, substance abuse and poverty, improved access to health facilities and housing, increased access to counselling, and improved administration of child protection and juvenile justice.”*²

More than a decade on the issues identified by the Special Representative as having the most relevance for children and young people within the developing peace process still have not been comprehensively addressed. Include Youth views the Review of Youth Justice as a critical element of that process of delivering on the peace agreement for children and young people.

Children and young people come into conflict with the law for a range of complex reasons connected to the broader context of their lives. Local and international research consistently demonstrates that children and young people are more likely to be involved in offending behaviour if they have experienced living in poverty, truancy or exclusion from school, limited educational attainment, neglect or abuse within their families, placement in residential care, drug or alcohol misuse, physical and mental ill health. In Northern Ireland there is the added dynamic of the legacy of the conflict which continues to overshadow the lives of many children, their families and communities.

In our submission to the Youth Justice Review we emphasised the need for the Review of Youth Justice to examine such underlying issues, many of which fall outside of the remit of the Department of Justice and sit within health, education, social development or employment and learning.

On the basis of this analysis of what was required Include Youth had serious misgivings regarding the initial proposals for the Youth Justice Review and its ability to deliver on the Hillsborough Castle commitment – these related to the timeframe, resources and independence.

Along with colleagues in the voluntary sector Include Youth engaged heavily with the Department of Justice and the Justice Committee to strengthen the key elements and features of the Youth Justice Review.

² (United Nations General Assembly Fifty-fifth session: Agenda item 110: Promotion and protection of children’s rights. 3 October 2000:pp 9-10)

Although we welcomed the extension of the timeframe of the review by three months we remained concerned that it would be an unachievable target for a Review Team comprised of three part time members to conduct the far reaching Youth Justice Review envisaged under the terms of the Hillsborough Castle Agreement. The Review Team itself acknowledged this,³ noting that the ‘sheer breadth and complexity’ of the task required them to focus “on those issues which we felt, if resolved, would make the greatest difference to the lives of children, victims and communities”. The Review team also acknowledged that there are issues which are not covered in their report.

While Include Youth has identified a number of significant issues not addressed by the Review, we believe it would have been most helpful for the Review Team itself to have identified those issues it felt it was precluded from taking forward due to time or resource constraints, thereby setting out clearly for the Department of Justice the outstanding programme of work required in order to fulfil the terms of the Hillsborough Castle Agreement.

2. Consultation

Approach taken to this consultation response

We have assessed the Review’s findings and recommendations against the Terms of Reference set for it by the Hillsborough Castle Agreement as well as against Include Youth’s own analysis and recommendations contained in our submission to the Review⁴; this consultation response draws heavily on that submission. It has also been informed by the deliberations from Include Youth’s annual conference this year the theme of which was the Youth Justice Review.

The Review report’s assessment of the current system is broadly correct – however with some notable exceptions the recommendations which follow are timid and not of the order required to make the more fundamental changes necessary to achieve a child rights compliant youth justice system.

There are a number of recommendations which we fully endorse but there are also a number of important areas where we believe that the Review Report falls short of what

³ Department of Justice (2011) A Review of the Youth Justice System in Northern Ireland; DOJ Page 7

⁴ Include Youth (2011) Submission to the Youth Justice Review Team’s Review of the Youth Justice System in Northern Ireland www.includeyouth.org/policy/submissions

was required as well as a number of very significant and disappointing gaps within this Report.

This response does not address each recommendation separately or in turn. Instead it begins by providing some broad commentary on the Review overall before critiquing the consultation process itself. It also examines the extent to which the Review adhered to one of the key terms of reference, that of reviewing the youth justice system against international obligations. It then evaluates the Report's analysis and recommendations in relation to a number of key themes, using our own submission to the Review as the starting point for this. We have attached a copy of that submission for ease of reference.

Consultation Process

Section 75 of the Northern Ireland Act 1998 but also Article 12 of the UN Convention on the Rights of the Child place particular obligations on the Department of Justice in relation to any consultation processes it undertakes. **We are concerned that in relation to the current consultation on the Review of Youth Justice these obligations are not being met.**

The Equality Commission's Guidance for Public Authorities on Section 75 of the Northern Ireland Act 1998 provides detailed guidance to public authorities on arrangements for consultation. It stipulates that "*consultation with affected individuals and representative groups begin as early as possible*".⁵

Regarding the best approach to consultation the guidance recommends that "*public authorities engage with affected individuals and representative groups to identify how best to consult or engage with them and consider a more proactive and targeted approach to consultation with key stakeholders*".⁶

Finally the Equality Commission's Guidance states that "*appropriate measures are taken to ensure full participation in any meetings that are held. Affected individuals and representative groups may have different needs and customs and we recommend that public authorities consider the time of day*"⁷

The Department of Justice's own draft Equality Scheme reflects the Equality Commission's guidance closely in terms of arrangements for consulting, including through its commitment

⁵ Equality Commission (2010) Northern Ireland Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities page 38

⁶ Ibid

⁷ Ibid page 39

to initiate consultation with all stakeholders as early as possible, engaging with affected individuals and representative groups to identify how best to consult or engage with them and considering the accessibility of the consultation format in order to remove barriers to the consultation process.⁸

We were therefore very concerned to learn about the Department of Justice's plan to conduct a series of eight evening time meetings to be held within a three week period between 24 November 2011 and 15 December 2011. Only a few days notice was given for the first of these meetings, scheduled for Thursday 24 November at 7pm in the Northern Ireland Council for Voluntary Action (NICVA).

Include Youth is challenged to understand how these particular arrangements for consultation meet any of the above requirements under the Equality Commission's Guidance on Section 75 or the Department of Justice's own Equality Scheme.

It is difficult to see how that series of meetings, organised at such a late stage in the process with little or no notice, could be considered as a genuine attempt to engage with stakeholders. It is particularly disappointing given the concerted effort made by the Review Team to engage with as broad a range of stakeholders as possible, including children and young people themselves.

Of related concern to Include Youth was the Department of Justice's delay in providing a child-friendly version which we only received the week commencing 21 November 2011. The Equality Commission's Guidance for consulting with children and young people 'Let's Talk, Let's Listen' is very clear regarding the steps public authorities should take to ensure that consultation with children and young people is effective. We are concerned that the production of this document occurs nearly two thirds through the consultation process and would contend that this greatly militates against the DOJ obtaining the representative views of children and young people.

In light of these concerns we believe that the consultation process should be urgently reviewed with a view to ensuring that adequate and effective consultation is carried out with children and young people, their representative groups but also with the wider public, in line with the Department of Justice's statutory obligations under section 75 of the Northern Ireland Act 1998.

⁸ Department of Justice (2011) Draft Equality Scheme for DOJ 2011-2015 issued for consultation on 21 March 2011 Paragraphs 3.5 and 3.6

3. International Children’s Rights Standards

The Review Team’s terms of reference, reflecting the Hillsborough Castle Agreement required it *“to have regard to international obligations in the area of youth justice”*⁹.

There exists an extensive and well developed body of both UN and European children’s rights and human rights instruments and standards (binding and non-binding) relevant to youth justice; Include Youth provided the Department of Justice with a briefing paper on these instruments and standards¹⁰ which was no doubt was shared with the Review Team.

The approach taken by the Review Team to this element of their terms of reference was outlined as follows *“in reviewing the system against international standards, we have given particular weight to the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC), where they are significant in relation to particular issues. An extensive analysis of children’s rights and international standards is available as a separate document”*.¹¹

That analysis of international standards with reference to the recommendations of the youth justice review is an extremely comprehensive, well researched, detailed yet focused piece of work. Given the size and scale of this document Include Youth understands why it was necessary to publish it in an annex as a companion document.

What we fail to understand however, particularly given the existence of this body of work, was the inadequate integration of children’s rights standards throughout the Review report. While the report claims to have made reference to children’s rights throughout the document ‘where relevant and important’, disappointingly this has not actually been the case in Include Youth’s view.

The Review report does make an effort to reference children’s rights standards but is a lot more limited in this regard than we would have expected given its terms of reference. Particularly noticeable was the very limited references to other core principles of the UN Convention on the Rights of the Child, aside from the best interest principle; these include the right to non-discrimination and the child’s right to have their voice heard and listened to.

For example, it was surprising not to see any reference to relevant children’s rights standards in the Review report’s short sections on looked after children and children with

⁹ Op cited at note 1

¹⁰ Include Youth (2010) Briefing paper on Relevant International Human Rights Standards and Commentary on Youth Justice

¹¹ Op cited at note 3, page 19

mental health difficulties, and only a passing reference to Article 2 on non-discrimination in the following section on ‘other special groups’, especially as these groups of children and young people are amongst those who experience the most serious breaches of their rights. Another aspect of the report which is weak in its assessment of the issue against relevant international children’s rights/human rights standards is in relation to rehabilitation and reintegration (the Review report only references Council of Europe recommendations whereas the annexed document details a range of relevant standards including the UNCRC, the Beijing Rules, the Havana Rules and the Tokyo Rules as well as Council of Europe recommendations and guidelines).

Equally noticeable was the insufficient reference to the most recent Concluding Observations from the UN Committee on the Rights of the Child¹², particularly as they made detailed recommendations in relation to youth justice.

Although no doubt unintended the unfortunate message communicated by the inclusion of a standalone chapter on children’s rights and international standards **at the end of the Review report** is that children’s rights standards constituted a separate and isolated consideration rather than the central benchmark against which all relevant law, policy and practice was to be measured against within the Review.

Given the Terms of Reference Include Youth would have expected to have seen a more explicit and detailed application, within the body of the report, of all of the relevant children’s rights standards to the various aspects of the youth justice system.

One way this could have been achieved would have been through the identification of the relevant instruments and standards at the start of each section as the framework and benchmarks for measuring current legislation, policy and practice against.

In relation to proposals for a Bill of Rights for Northern Ireland we welcome the Review Team’s comments regarding the particular circumstances of children’s lives in Northern Ireland, which they consider warrant ‘special consideration’.

The Review Team expressed surprise at the lack of a specific focus on children and young people within the Northern Ireland Office’s 2010 proposals on a Bill of Rights for Northern Ireland¹³ -given this accurate and important observation Include Youth was disappointed

¹² UN Committee on the Rights of the Child (2008) Concluding Observations. United Kingdom of Great Britain and Northern Ireland paragraphs 77 -80

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

¹³ Northern Ireland Office (2009) Consultation Paper A Bill of Rights for Northern Ireland: Next Steps

that they then stopped short of making the obvious recommendation arising from these comments on the need for a separate section on children's rights in a Northern Ireland specific Bill of Rights.

We were also disappointed that the Review Team did not make the clear connection between incorporation of the UNCRC and the Bill of Rights for Northern Ireland.

Include Youth and others have long argued for the incorporation of the UNCRC through the Bill of Rights for Northern Ireland. This position is consistent with and has been supported by the UN Committee on the Rights of the Child, in its General Comment No 5¹⁴ and most recently in its 2008 Concluding Observations when it expressed concern that the state party had not yet incorporated the Convention into domestic law nor ensured the compliance of all legislation affecting children with it¹⁵ and went on to recommend that the principles and provisions of the Convention be incorporated into the Bill of Rights for Northern Ireland in a separate section on children's rights.¹⁶

4. Aims of the Youth Justice System

As outlined earlier Include Youth believes, based on very sound evidence that the broader youth justice system is not compliant with international children's and human rights standards in a number of significant areas.

The absence to date of Article 3 of the UN Convention on the Rights of the Child, the best interest principle, within the aims of the youth justice system has been at the core of this assessment.

Not surprisingly therefore we fully support the Report's recommendation No 28 that Section 53 of the Justice (NI) Act 2002 should be amended to fully reflect the best interest principle.

Building on this important move there are then additional steps which we believe are required to ensure that our youth justice system is fully child rights compliant.

¹⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement> Paragraphs 18-23

¹⁵ Op cited at note 12 <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> paragraph 10

¹⁶ Ibid paragraph 11

One of these is the need to conduct an audit of all existing criminal justice legislation, policy and practice relating to children and young people for compliance with international standards and best practice. In addition a process of child impact assessment and child impact evaluation must be built into the policy development process at the earliest possible stage.¹⁷

5. Minimum Age of Criminal Responsibility

As outlined in our submission to the Review of the Youth Justice System Include Youth's considered position is that the minimum age of criminal responsibility should be raised to 16 in line with international standards. However, we welcome the Report's recommendation as a step in the right direction and are pleased to note that the recommendation specifies that the age should be raised to 12 with immediate effect.

We are also encouraged by the recommendation that following a period of review of no more than three years consideration should be given to raising the age to 14.

However before the age of criminal responsibility can be raised to 12 it is essential that the necessary services and supports for children, their families and their communities are already place.

We believe that it is absolutely vital therefore that the Report's linked recommendation, No 30, on the need to develop local services and programmes to meet the needs of children and young people who would otherwise have entered the criminal justice system, is also acted on with urgency. This includes drawing on universal services and reinforcing the use of restorative interventions such as family group conferencing and Community Based Restorative Justice.

Families, communities, the public and the body politic needs to be confident that there is a sufficiently robust child care system in place to be able to address the needs of all concerned.

¹⁷ Op cited at note 12 paragraph 45 " Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy"

A number of questions arise in relation to recommendations 29 and 30:

- **Has the Department of Justice assessed what additional provision would be required in terms of local services and programmes in order to meet the needs of children who would otherwise have entered the criminal justice system were the minimum age of criminal responsibility to be raised to 12 with immediate effect?**
- **What agencies and organisations does the Department of Justice envisage would be involved in the provision of those services that would be needed to meet the needs of those children aged 10-12 who offend if they are to be dealt with outside of the criminal justice system?**
- **What role does the Department of Justice envisage for local community based organisations and voluntary organisations in responding to the needs of these children outside of the criminal justice system?**
- **Assuming that Recommendation 29 is accepted and that the minimum age of criminal responsibility is raised to 12 with immediate effect how will the Department of Justice review the impact of this change to inform its consideration of a further increase in age to 14 years, within the three year period specified in the recommendation? What criteria will it use to conduct such a review?**

6. Early Intervention and Prevention

Include Youth very much welcomes the prominence given in the Report to early intervention and prevention.

As noted by the Review team it is now widely accepted that investment in health, education and family support in the early years of children's lives has a significant impact on their future life chances, through the prevention of social exclusion as well as of becoming involved in offending behaviour.

Evidence from Include Youth's experience of working with young people in the youth justice system, backed up by international research, consistently demonstrates that young people's offending behaviour routinely reflects unmet complex needs. These combine to define and restrict their daily lives, leaving them with a sense of rejection and powerlessness. Many experience poor educational attainment, misuse of drugs or alcohol, engage in unsafe sexual behaviour or have been in residential care. They are often survivors of childhood

trauma such as physical or sexual abuse, domestic violence or living in unsafe neighbourhoods.

Additionally, as a society in transition the legacy of the conflict continues to affect children, their families and communities, *“social exclusion, political alienation and economic deprivation are central to the problems faced by many children and young people in Northern Ireland, contributing to what is perceived or labelled ‘anti-social’ or offending behaviour”*.¹⁸

It is essential that the complexities of young people’s lives are identified and understood and that appropriate, well resourced support is provided through early intervention measures. This requires cross departmental working and a commitment to an early intervention approach. Such an approach, targeted at promoting the well being of all children and characterised by universal services, holistic approaches and decriminalising responses comprise the most effective and least damaging forms of intervention and will subsequently minimise the necessity for intervention by the criminal justice system.¹⁹

The UN Committee on the Rights of the Child has been very clear regarding the obligation on governments *“to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturn”*.²⁰

Furthermore, paragraph 45 of General Comment No 5 requires government to undertake a continuous process of both child impact assessment and child impact evaluation, including in relation to budgetary allocations.²¹

In view of this we would have expected the Review report to have drawn government’s attention to these obligations. The Review report notes that the terms of reference included the requirement to have regard to a *financially uncertain future*. Again the logic of adopting a child rights framework for conducting this review within would have led to a clear recommendation around the need to ensure that the child’s best interest is paramount in any decisions regarding budgetary allocation. **It would also have led to a**

¹⁸ Haydon, D. (2009) Developing a Manifesto for Youth Justice in Northern Ireland Background Paper, Include Youth: Belfast. Page 21

¹⁹ Goldson, B. (2011) Presentation by Professor Barry Goldson to the NI Assembly All Party Group on Children and Young People 1 February 2011

²⁰ UN Committee on the Rights of the Child (2003) General Comment No 5 General Measures of Implementation of the Convention on the Rights of the Child, paragraph 51.

²¹ Ibid paragraph 45

much stronger recommendation to government on the absolute need to prioritise funding for investment in early intervention and prevention.

As stated earlier, in broad terms we fully support the emphasis placed on early intervention and prevention within the Review report. **We remain to be convinced however as to whether the recommendations made in the Review report regarding an Early Intervention and Prevention Strategy as well as the establishment of an Early Intervention Unit represent the most effective way to secure the mainstreaming of early intervention and prevention across the work of all relevant government departments and agencies.**

The Children and Young People's Strategic Partnership is already committed to supporting an increased focus on early intervention as key to its role in improving the 6 high level outcomes for children and young people. It has established an Early Intervention Sub-group and has indicated that it will seek status for Northern Ireland as an early intervention region.²² It intends to *"drive an early intervention focus in the Northern Ireland Children and Young People's Plan and highlights integrated planning and commissioning across Northern Ireland as well as within each of the partner agencies business planning processes as a key way in which to do this"*.²³

Given this pledge and the potential which exists now through this newly formed structure to deliver on that commitment we are unsure as to what added value a separately developed early intervention and prevention strategy would add. It is also worth noting that Recommendation No 1 regarding the involvement of the Strategic Partnerships seems to misunderstand the role of the Strategic Partnerships which is about joint planning and commissioning, rather than simply being a delivery mechanism.

We do however fully support Recommendation 3.b which deals the need to identify and remove barriers to pooled funding and collaborative working. In our view this is absolutely critical to the effectiveness of mainstreamed early intervention and preventative work.

We were both disappointed and puzzled however that the Review report didn't progress to making a recommendation on the need to legislative for a statutory duty to co-operate. In our view it is only through a statutory duty to co-operate that the type and level of co-operation required to ensure that early intervention and prevention is firmly mainstreamed across government will be achieved. **Placing the duty to co-operate on a statutory footing**

²² Health and Social Care Board (2011) Children and Young People's Northern Ireland Children and Young People's Plan 2011-2014 Consultation Document

²³ Ibid

would give the Children and Young People's Strategic Partnership the 'muscle' that they ultimately require.

7. Policing and children and young people

The Review report correctly recognises the crucial importance of 'getting right' policing with children and young people, not only because the police act as one of the main gatekeepers into the criminal justice system but also because the acceptance and legitimacy of the PSNI continues to be a critical factor in ensuring that peace is secured for future generations.

In addition to examining the PSNI's role in diversionary processes and the issue of complaints procedures (both of which will be addressed later in this response) the Report also explores issues around relations and perceptions between children and young people and makes some recommendations around improving relationships between the PSNI and young people.²⁴ Whilst fairly uncontroversial these recommendations are lacking in the necessary detail to ensure delivery. The wording of the recommendations, 'modelling best practice' and 'developing an appropriate skills package' is vague and open to interpretation as to what is required.

However, the most serious issue is that the report does not address many of the major policy and operational issues in relation to policing and young people, which underpin and shape the negative perceptions by young people of the PSNI which the report talked about. Many of these issues represent serious breaches of children's rights and include the release of images of young people, use of stop and search powers and the use of ASBOs.

The report's failure to address these issues is all the more difficult to understand given the comprehensive Thematic report on children and young people produced by the Policing Board in January 2011.

The Review report rightly commended the PSNI for its recently revised policy on 'the policing of children' (sic). The issuing of this policy directive on policing with children and young people²⁵ was a very positive development, particularly as it incorporated the UN Convention on the Rights of the Child, thereby placing an onus on the PSNI to consider its application to all relevant policy and service procedures.

²⁴ Op cited at Note 3 Recommendation 4 (b) and (c)

²⁵ Police Service Northern Ireland (2006) Policy Directive with Children and Young People Policy Directive PD 13/10 ; reissued 15 January 2010

However, the ongoing challenge, **which was not addressed by the Review team, is with the operationalisation of this policy into practice.** This requirement was highlighted by the Policing Board's Thematic Review on Children and Young People *"it should be noted that appending the UNCRC is a very positive addition, however that in itself is insufficient if the principles espoused by the UNCRC are not translated into practice. Accordingly practice as well as policy must be scrutinised."*²⁶

For all the reasons identified above Include Youth believes that the issues identified and solutions proposed within the Policing Board's thematic report deserved careful examination in the context of the review of youth justice. We would also draw attention to the detailed analysis of issues around policing and children and young people contained in Include Youth's submission to the Review of the Youth Justice System in Northern Ireland.

In view of the Review report's serious failure to address these issues we would ask how the Department of Justice will ensure that they are properly scrutinised and recommendations for change identified as part of the ongoing process around the review of youth justice.

8. Diversion and Prosecution

Include Youth is in full agreement with the narrative running throughout the Review report, underpinned by the principle of proportionality, of keeping young people, including those involved in low level offending, out of the criminal justice system whenever and wherever possible.

However while the Review Team correctly places significant emphasis on the need for diversion from the criminal justice system we would have liked them to go further with their thinking and recommendations in this regard, particularly in relation to diversion from police led diversionary disposals and into community based responses.

The PSNI clearly constitute a criminal justice agency and given the clear acknowledgement of this in the Report we would have expected a conclusion that less rather than more PSNI involvement in the lives of children and young people is what is required.

One of the key findings of the Edinburgh Study of Youth Transitions and Crime is that *"the key to reducing offending lies in maximum diversion and minimum intervention"*.

²⁶ Northern Ireland Policing Board (2011) Human Rights Thematic Review Children and Young People Page 11

In light of this evidence Include Youth believes there should have been a much greater emphasis within the Report on the prioritisation and resourcing of community based supports and interventions for young people at risk of offending or who are engaged in low level offending.

We believe that the PSNI, rather than being seen as the first tier in a series of incremental disposals available to respond to low level, minor and non persistent offending behaviour, should instead be engaged in diverting those children and young people and their families to welfare based, support services within the community.

9. Community Based Restorative Justice Schemes

We are in agreement with the Review Team's assessment that community based restorative justice schemes are *"an important and effective part of the youth justice landscape"*.²⁷ The Review report's recommendation on the need to *"(build) on the successful practice of community based restorative justice schemes"*²⁸ reflects closely Include Youth's recommendation in our submission to the review on the need for continued and sustained support for existing community-based restorative justice programmes and the availability of community run restorative justice processes in all communities in Northern Ireland.²⁹

The Review report highlighted a recent, very positive inspection of Community Restorative Justice Ireland (CRJI).³⁰ This inspection, in commenting on the low numbers of cases dealt with under the Protocol highlighted some of the difficulties this Protocol had posed for community based restorative justice projects in both loyalist and republican/nationalist communities, noting that these projects had consistently argued since its introduction in 2008 that the Protocol was unworkable.³¹ Pointing out that both the DOJ and the PSNI both recognised that the Protocol was established for a different era and that it was always intended that it be reviewed in light of operational experience, the Inspectors suggested that the time was right for such a review to occur.³²

Include Youth supports this assessment and recommendation and believes that government should take all steps necessary to ensure that Community Based Restorative

²⁷ Op cited at note 3 page 49

²⁸ Ibid page 51

²⁹ Op cited at note 4 age 79

³⁰ CJINI (2011) Community Restorative Justice Ireland: A follow- up review of the Community Restorative Justice Ireland community restorative justice schemes.

³¹ Ibid Paragraph 4.1

³² Ibid Paragraph 4.2

Justice Schemes are as effective as possible in dealing with low level offending by children and young people outside of the formal criminal justice system.

In this regard Include Youth welcomes the establishment of pilot schemes to facilitate greater involvement of CBRJ schemes in delivering restorative cautions, and, dependent on the success of these pilot schemes would wish to see this approach extended.

10. Discretionary Disposals

The Review report examined the introduction and operation of discretionary disposals and, while noting that some police liaison groups and some groups that represent young people had expressed concern about this development, mainly as regards the constructive and effective use of such additional powers, made a recommendation that the use of police discretion be extended, while ensuring adequate safeguards.

Include Youth is very supportive of approaches to dealing with low level offending that work to keep young people in particular out of the formal criminal justice system. We support the principle of immediate diversion of young people from the formal criminal justice system for low level offending.

A central tenet of our submission to the Youth Justice Review was that diversion should be the cornerstone of an effective youth justice system.³³ Include Youth defines diversion from the formal criminal justice system as being **diversion from all engagement with statutory criminal justice agencies and processes** prior to having been convicted for committing a criminal offence.

However we do have a number of concerns regarding the introduction and operation in Northern Ireland of discretionary disposals or ‘speedy justice’ as it is known. These concerns arise from our assessment of ‘speedy justice’ against international children’s rights standards as well as the PSNI’s legal obligations imposed by Section 75 of the Northern Ireland Act 1998. We have also considered the growing body of international evidence regarding the benefits of genuine diversion from the formal criminal justice system.

In principle while we support the introduction of discretionary disposals the use of these powers cannot be at the expense of transparent, child rights compliant, accountable justice.

³³ Op cited at note 4

Our specific concerns relate to the following areas:

- the consultation process
- compliance with international children’s rights standards
- the apparent privileging of the victim’s views and concerns within the process
- lack of consideration of the best interests of the child
- the issue of informed consent
- proportionality
- resulting criminal record
- the separation of criminal justice functions and accountability mechanisms

We have addressed these concerns in some detail in a recent response to the PSNI’s consultation on its Service Procedures regarding discretionary disposals. Please refer to this submission for a more detailed critique.³⁴

We believe that the concerns outlined above must be addressed if young people, those working on their behalf and the wider public are to have confidence that the use of these powers will not only have the victim’s needs in view but also and more importantly the best interests of the young people as the paramount consideration.

11. Bail and remand

Having examined the profile of children and young people detained in Woodlands JJC we agree with the conclusion reached by the Review report regarding its current use *“Woodlands needs to change from being a remand centre to being what it was meant to be – a facility for young offenders sentenced to custody”*.³⁵ The Review report highlighted the overuse of PACE remands, the over representation of looked after children and the ‘constant churn of children passing through the Centre on admission’, all issues raised within Include Youth’s submission to the Review.³⁶

Criticism of this persistent and ever increasing pattern has also been made by successive independent inspections and investigations by human rights bodies; the most recent inspection of Woodlands JJC by the Criminal Justice Inspection Northern Ireland in November 2011 described it thus *“the problems which were highlighted in the 2008*

³⁴ www.includeyouth.org/policy/submissions

³⁵ Op cited at note 3

³⁶ Op cited at note 4 ages 88-89

*inspection still prevailed; there were too many PACE placements, too many LAC admissions and high rates of turnover”.*³⁷

We therefore support the Report’s recommendation No 8 on the development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce the use of Woodlands as a place of safety under PACE.

However we believe that the Report should have gone further than saying the use of Woodlands Juvenile Justice Centre as a place of safety should be reduced to an absolute minimum and recommended that it should never be used as a place of safety, as there is a danger of a backwards slide, with its use for PACE remands gradually increasing once again.

We also welcomed the Review Team’s exploration of the issues in relation to bail. The Report’s underlining of the statutory presumption of bail without condition for young people is important as is its observation that the lack of an address should not be a sufficient ground for remanding a child into custody. Include Youth raised both of these concerns in its submission to the Review of the Youth Justice System in Northern Ireland³⁸ as well as in its submission to the Northern Ireland Law Commission’s consultation on bail in criminal proceedings.³⁹

The provision of suitable and appropriate accommodation for young people on bail who cannot be accommodated with their family/carers or in a residential care setting must be urgently addressed.

We agree with the Review report’s four part recommendation on bail (recommendation 9).

It would be helpful for the Department of Justice to outline what it sees as the next steps in taking these recommendations forward, in the context of the Northern Ireland Law Commission’s recent consultation on this matter.

³⁷ CJINI, ETI and RQIA (2011) An announced inspection of Woodlands Juvenile Justice Centre, CJINI paragraph 1.15

³⁸ Op cited at note 4 Pages 54-56

³⁹ www.includeyouth.org/policy/submissions 2011

12. Youth Conferencing

We believe that there was a missed opportunity within the Review to critically evaluate both the model and the operation of Youth Conferencing (both diversionary and court ordered) as it has been rolled out here, particularly in light of international evidence to suggest that diversionary conferencing can be a mechanism for net widening and simply a bolt-on to the criminal justice system.

While the Report does acknowledge that there is a need, after five years of operation, to take stock of how well youth conferencing is working and makes a number of recommendations as to how its current operation can be improved upon, its overall assessment is that youth conferencing as it has been developed and delivered in Northern Ireland represents a model of best practice internationally.

Although strong advocates for the implementation of restorative practices with children and young people involved in low level offending, Include Youth takes a rather more critical view of diversionary youth conferencing to that adopted by the Review team. We raised several concerns in our submission to the Review of the Youth Justice System in Northern Ireland regarding the current implementation of youth conferencing, based on feedback from children and practitioners who have been supported through the process.

Issues highlighted included the fact that a diversionary youth conference results in a record, disclosable in certain prescribed circumstances, the issue of informed consent and meaningful participation, a frequently protracted and excessive process, difficulties with assessing the impact of diversionary youth conferencing on re-offending rates, the prevalence of multiple conferences, the categories of victims who attend, particularly corporate type victims, the presence of PSNI officers at conferences and the protection of the child or young person's rights, particularly the best interest principle, within the process.⁴⁰

Include Youth also expressed concerns regarding the model of retributive shame which underpins the current statutory conferencing system, both in terms of it being a barrier to enabling the child or young person to participate in the proceedings on an equal footing, and a block to preventing the child to being genuinely supported in addressing the context and circumstances of their offending behaviour. Given this particular concern we would dispute the Review report's identification of one of the strengths of the system as being its

⁴⁰ Op cited at note 4 Pages 72-76

ability to enable “*young offenders make the link between their behaviour, the conference discussion and the plan*”.⁴¹

The Review report did usefully examine some of these issues, including the importance of direct victim participation in proceedings, the issue of delay within the process, inappropriately extensive or misdirected plans and the use of multiple conferences for young people who are persistent offenders.

Disappointingly however its recommendations focused on refining and embedding the process further rather than on the need to undertake a more fundamental, independent evaluation of both the model and the operation of diversionary youth conferencing in Northern Ireland.

Interestingly, it is within the Review report’s discussion of the issue of delay, rather than within the section on youth conferencing itself that the report comes closer to the nub of some of the serious issues which underlie the operation of youth conferencing in Northern Ireland.

The Review report recommended that diversionary youth conference should be renamed PPS ordered youth conferences in an effort to acknowledge that they are not actually a diversion from the formal criminal justice system and the acquisition of a criminal record⁴², both criticisms which have been made by Include Youth.

In its examination of the issue of criminal records⁴³ the Review report makes the following observation regarding criminal records “ if the disclosure implications of diversionary disposals became widely known, there is every possibility that increasing numbers of young offenders would choose to take their chances in court, thus undermining the whole purpose of diversion”.⁴⁴ Given this recognition we were surprised not to find any discussion of this in relation to diversionary youth conferencing.

While certainly not suggesting the removal of youth conferencing from the menu of disposals available, Include Youth would have liked the Review team to have given serious thought to the need to redirect resources away from what is, in diversionary conferencing a very expensive process towards greater investment in non-criminalising community based interventions.

⁴¹ Op cited at note 3 p60

⁴² Ibid page 70 and recommendation 13

⁴³ Ibid page 83

⁴⁴ Ibid page 83

In our view there is a clear argument for the reintroduction of a speedier, less intrusive, less bureaucratic process, with minimum contact with the criminal justice system, which signposts children and young people in trouble to the necessary welfare based provision in the community. Our submission provided examples of models of good practice which deserve examination with a view to replicating them on a more widespread basis.⁴⁵

13. Delay

On the serious issue of tackling delay Include Youth agrees with the Review Team’s description of the problem as ‘endemic’ and as one which ‘impacts on virtually every judicial process and practice, from bail and remand to sentencing and rehabilitation’.⁴⁶

Our submission drew attention to the requirement in international law for cases involving children and young people to be expedited as quickly as possible. Article 40 (2) of the UN Convention on the Rights of the Child provides for cases involving young people to be determined without delay. The UN Committee on the Rights of the Child’s General Comment Number 10 states *“for children in conflict with the law the time between commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatised”*.⁴⁷ Clearly current practice within the youth justice system is in breach of this requirement.

Young people themselves also expressed frustration with the inordinate delay in relation to disposal of cases, explaining that what was required was *“a quicker court process – you need action to happen quickly, as soon as possible after the offence”*.

As the Review Team noted, the problem of avoidable delay has been repeatedly highlighted in successive Criminal Justice Inspection Northern Ireland reports yet has proven stubbornly resistant to improvement. The Youth Justice Agency figures detailed in the Review report speak for themselves. Despite an awareness of this problem and various efforts being made to address it over a number of years the Review report concluded that *“each successive initiative has delivered at best only limited improvements and at worst, has made no impact at all”*.⁴⁸ Of particular concern is the fact that the average time it takes to complete a diversionary youth conference has increased substantially since their introduction in 2006.

⁴⁵ Ibid pages 75-76

⁴⁶ Ibid page 68

⁴⁷ UN Committee on the Rights of the Child (2007) General Comment No 10 Children’s Rights in Juvenile Justice

⁴⁸ Op cited at note 3 p69

Given this picture Include Youth support recommendation No 15 on the need to introduce statutory time limits as a way to address the chronic issue of delay within the system; we welcome in particular the detail and precision contained within this recommendation. We note with approval a similar recommendation in the Prisons Review report.

We were disappointed to hear the Minister of Justice, on publication of this report⁴⁹, reiterate an earlier position from November 2010 that the system was still not at a stage of functioning well enough to allow for the introduction of statutory time limits.

Include Youth is in agreement with the Review Team that the only way of getting the system to function well enough is in fact to introduce statutory time limits and we would urge the Minister of Justice to give further consideration to this recommendation.

14. Custody

Include Youth supports Recommendation No 16 on the removal of u18s from Hydebank Wood YOC and accommodating them in Woodlands Juvenile Justice Centre but is extremely concerned as to the time frame suggested in this recommendation i.e. no later than 18 months from the publication of this report, which would mean by March 2013.

When pressed as to the rationale for the inclusion of this specific time frame the Chairperson of the Review Team John Graham indicated that *“to some extent 18 months is an arbitrary figure”*,⁵⁰ citing his own experience of working in government and the practicalities of making the recommendation happen as the reason for fixing the upper end of this timescale at 18 months.

It is very significant that the Criminal Justice Inspection Northern Ireland (CJINI) while also recommending the removal of all under 18s from Hydebank Wood Young Offenders Centre and their accommodation in Woodlands Juvenile Justice Centre has taken quite a different position on the time frame required. Having conducted a detailed examination of the current situation in both Woodlands JJC and Hydebank YOC, and while recognising progress made to date via the quadripartite group as well as *“the legal and practical impediments to placing all under 18-year-old boys in the JJC”*⁵¹ it nonetheless concluded that *“none of these (impediments) are insurmountable”*. It therefore recommended that by April 2012 *“all male*

⁴⁹ Northern Ireland Assembly Hansard 26 September 2011

⁵⁰ Include Youth (2011) Annual Conference ‘Getting the Right Youth Justice’ 27 October 2011

⁵¹ CJINI, ETI and RQIA (2011) An Announced Inspection of Woodlands Juvenile Justice Centre, CJINI paragraphs 2.27 and 2.28

children who are sent to custody should be treated equally with female children i.e. their default placement should be Woodlands JJC".⁵²

It further recommended that in the interim the JJC should take a more central role in the YOC planning process for children, including chairing of the meetings and that terms of reference should be prepared for those meetings, with the primary purpose of the meetings being to establish the child's suitability for transfer to the JJC.

The urgency of this issue cannot be overstated. It is Include Youth's belief, one which is supported by other children's rights NGOs⁵³, there is a fundamental right to life issue involved here, given the levels of serious mental ill health experienced by many of the young people concerned and the lack of any child and adolescent mental health service operating in Hydebank Wood Young Offenders Centre. We are calling on the Minister of Justice to act with all urgency to move all under 18 year olds from Hydebank Wood Young Offenders Centre to Woodlands JJC.

Include Youth was encouraged to hear the Minister for Justice state in the Assembly on 26 September 2011 that work is already in hand to implement Recommendation number 16 but given the urgency of this matter there are a number of questions that need to be answered, including:

- **Given the recommendation from the Criminal Justice Inspection Northern Ireland regarding the time frame for implementation of this recommendation will the Department of Justice ensure that it is fully implemented by April 2012?**
- **What are the legislative and practical steps involved in the transition?**
- **Who will be responsible for ensuring adherence to the action plan?**
- **What benchmarks will be established to measure progress against?**
- **What measure will be in the action plan to ensure best outcomes for under 18s in Hydebank during the transition phase?**
- **Who will have responsibility for oversight of the transition of under 18s from Hydebank Wood YOC to Woodlands JJC?**

⁵² Ibid paragraph 2.28

⁵³ Op cited at note 50 Presentation by Paddy Kelly, Director Children's Law Centre 1

Include Youth supports recommendation number 17 which states that young people who attain the age of 18 while in custody should have their place of detention determined by an assessment of their circumstances, paying particular attention to their needs and best interests. The UN Committee on the Rights of the Child, in stipulating that all under 18s must be separated from adults, points out that this requirement does not mean the automatic transfer of a young person in a youth custody setting to an adult custodial facility once they reach 18 years of age. Rather it recommends that *“continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility”*.⁵⁴

In our view the care based regime of Woodlands JJC is much more suited to addressing the needs of vulnerable young adults than the prison regime of Hydebank Young Offenders Centre. We agree with the Review team’s recommendation that “at a minimum (they) should undergo a full assessment of their needs and circumstances, including their developmental age, the duration of the remainder of their sentence and their capacity to ‘survive’ in an adult prison.”⁵⁵

The importance of responding appropriately to the individual needs and situation of each young person in custody was summarised succinctly by the final report on the Review of Northern Ireland’s Prison Service: *“it is not realistic to assume that an 18th birthday celebration results in an instant transformation from child to adult”*.⁵⁶ That review highlighted the lack of tailored services for young adults within the prison service, noting that the resources available at Hydebank Wood Young Offenders Centre are *“far poorer than at Woodlands JJC”* and that young people in early adulthood tend to fall through the cracks as far as addressing their needs is concerned.

Many of the young adult prisoners detained in Hydebank Wood can clearly be classed as vulnerable. A Criminal Justice Inspection (NI) thematic report on mental health found a high incidence of mental health needs in the young offender population.⁵⁷ NIACRO has estimated that 72% of male and 70% of female sentenced prisoners suffer from two or more mental disorders while 75% of all prisoners have a dual diagnosis (mental health problems combined with alcohol or drug misuse).⁵⁸

⁵⁴ Op cited at note 47 paragraph 86

⁵⁵ Op cited at note 3 page 77

⁵⁶ Prison Review Team (2011) Review of the Northern Ireland Prison Service (final report) page 70

⁵⁷ Criminal Justice Inspection Northern Ireland (2010) Not a Marginal Issue -Mental Health and the Criminal Justice System in Northern Ireland page 47

⁵⁸ NIACRO (undated) Briefing Note The Importance of Effective Resettlement
<http://www.niacro.co.uk/briefing-notes/?id=2>

15. Reintegration and Rehabilitation

This is a key aspect of the overall youth justice system and is one Include Youth expected the Review report to be much stronger on. In our view the inadequate focus on this issue constitutes a significant limitation within the overall report, notwithstanding its recommendation that the legislation on the rehabilitation of offenders should be overhauled, which we obviously welcome.

Although it is right to emphasise prevention and diversion we cannot overlook those young people for whom involvement with the formal criminal justice system is a significant feature of their lives.

Despite identifying some notable examples of good practice the Review report's conclusion is that reintegration and rehabilitation are not high priorities for government and consequently are not well resourced. **Yet the report's single recommendation No 20 in relation to reintegration and rehabilitation was very general and lacked the kind of useful detail included in its earlier recommendation on tackling delay.**

The report identifies training connected to future stable employment as one of the most effective ways of preventing young people from re-offending. It points to a number of pre-employability programmes which have the specialised knowledge and skills to successfully engage custody experienced young people to enable them to achieve positive outcomes, including the Give and Take Scheme run by Include Youth. The success of such specialised pre-employability programmes has been proven – between 11% and 15% of young people who have completed the Give and Take Scheme move into employment, while a further 40% to 50% move into further education or training.⁵⁹ Yet such programmes can only meet the needs of a small proportion of such vulnerable young people.

The Review report highlights the precarious funding position of many of these projects which it sees as indicative of the lack of priority afforded to reintegration work with this group of young people. In the absence of a serious, high level, concerted effort to address the particular needs of this group of young people the situation will become even worse given the economic recession and the growing population overall of young people who are classified as not in education, training and employment. It is imperative that this issue is addressed within the context of the current cross departmental Pathways to Success Strategy being developed.

⁵⁹ Curran, M. and Boyle, C. (2011) Evaluation of the Give and Take Scheme: Include Youth

Most disappointingly the Review report failed to take the opportunity presented by the development of the Pathways to Success Strategy, and indeed by the Programme for Government, to emphasise to government the importance of prioritising the needs of custody experienced young people, thereby delivering on the type of cross departmental strategic approach heavily emphasised throughout the report.

The review report did not assess in any detail how the two separate regimes in Woodlands JJC and in Hydebank Young Offenders Centre address the reintegration of young people back into their communities on release from custody and while it appeared that comments related in the main to Hydebank Young Offenders Centre this was not sufficiently clear.

In its recent inspection of prisoner resettlement by the Northern Ireland Prison Service⁶⁰ the Criminal Justice Inspection Northern Ireland noted that *“the Northern Ireland Prison Service is focused on managing an adult population with a custodial rather than a parental model, and it has faced significant criticism of its provision for children at the YOC. Children held there are among the most troubled and needy in society, yet they have a poor regime with lengthy periods of lock up and little opportunity for education or rehabilitative activities”*. This report reiterated the Criminal Justice Inspection’s previous recommendation that by April 2012 the default placement for all under 18 males should be Woodlands JJC.⁶¹

Priority must be given to moving under 18s out of Hydebank Wood YOC and into Woodlands JJC with all urgency – their reintegration and rehabilitation requirements can then be much more appropriately considered within the welfare based model which operates in Woodlands JJC.

The Review report does not examine policy and practice in relation to the resettlement of children and young people on release from Woodlands JJC back into their communities. Given the current age cohort involved the importance of facilitating and supporting children to re-engage with education within the community on their release is of critical importance. Development of more robust links between the Education and Library Boards (or the new Education and Skills Authority once it is operational) to support children on their exit from Woodlands still remains a challenge according to the most recent inspection of Woodlands JJC by the Criminal Justice Inspection Northern Ireland.⁶²

⁶⁰ Criminal Justice Inspection Northern Ireland (2011) An inspection of prisoner resettlement by the Northern Ireland Prison Service , Criminal Justice Inspection Northern Ireland paragraph 4.12

⁶¹ Ibid paragraph 4.17

⁶² Criminal Justice Inspection Northern Ireland, ETI and RQIA (2011) An announced inspection of Woodlands Juvenile Justice Centre, CJINI Paragraph 6.10

Among the supports and services young people currently coming out of Hydebank Wood Young Offenders Centre require to stop them ‘falling through the cracks’ as it were include with accommodation,⁶³ benefits and financial advice, healthcare services, addiction services and education, training and employment opportunities. **Appropriate provision to address the reintegration and rehabilitation of all under 18 year olds will have to be made in Woodlands JJC, recognising that the needs of those young people under compulsory school leaving age will be very different to those post 16.**

It is widely recognised that lack of appropriate accommodation for young people on release from custody is a significant factor in their becoming re-involved in offending behaviour. Research published by Barnardos in England identified the provision of suitable accommodation as a key element in supporting custody experienced young people to reintegrate successfully into their communities.⁶⁴ Young people in their submission to the Youth Justice Review also drew attention to the need for appropriate accommodation for young people coming out of custody, *“somewhere to live – only three hostels in NI where I can go, but they are at the other end of the country”*.⁶⁵

Include Youth recognises the positive, ongoing work on this issue being carried out by a Regional Reference Group on homeless 16-17 year olds. We support such developments and urge greater co-ordination and co-operation both within and across agencies in order to ensure that young people do not fall between the stools of administrative or agency boundaries. However we believe that outstanding proposals to amend legislation in order to give ‘priority need’ status to 16 and 17 year olds who are homeless but do not fall within the remit of social services, similar to legislative provisions which exist in Scotland and England, should be advanced without further delay.

We were disappointed that the Review report did not pay attention to the central issue of accommodation within its examination of issues relating to reintegration and rehabilitation and that it did not take the opportunity to recommend that custody experienced young people’s right to accommodation be placed on a statutory footing in line with legislative provisions in other jurisdictions. We were particularly disappointed given that the legacy of the conflict in Northern Ireland, in the form of ongoing

⁶³ 35% of young people aged 16-25 felt a lack of accommodation was the factor most likely to make them offend Bromley Briefings [http:// www.prisonreformtrust.org.uk/uploads/documents/FactFileJuly2010.pdf](http://www.prisonreformtrust.org.uk/uploads/documents/FactFileJuly2010.pdf)

⁶⁴ Glover, J. and Clewett, N. (2011) No Fixed Abode: The housing struggle for young people leaving custody in England, Barnardos

⁶⁵ The Youth Safety Network (2011) Young people’s views and experiences of the Youth Justice System A Submission to the Youth Justice Review page 34

sectarianism and vigilantism, presents additional difficulties facing custody experienced young people obtaining suitable and safe accommodation.

The lack of any assessment within the Report of the efficacy of the work that the Youth Justice Agency, the Probation Board and their partners in the voluntary and community sector undertake in relation to the prevention of re-offending is regrettable. While noting that for those young people returning to their communities *“some help is available through voluntary organisations and the PBNI”* the Review report reached the following conclusion *“overall, however, it is not enough, help is not guaranteed and it is provided in a piecemeal way with services inside and outside custody being insufficiently integrated to allow for continuity and a relationship of trust.”*⁶⁶

Additionally we were disappointed that the Review Team did not *“reach a position on the nature and scope”* of issues concerning the overlap of services between the Youth Justice Agency and PBNI. Include Youth urges the Department of Justice to rectify this situation by asking CJINI to review the current arrangements as the Review suggests.⁶⁷

In light of this judgement we would have expected the Review team to have undertaken an evaluation of current provision and the roles of the various sectors and agencies in this provision with a view to making recommendations for change.

As stated earlier Include Youth supports the Review report’s recommendation (21.a) on the need to overhaul policy and legislation relating to the rehabilitation of offenders to reflect the principles of proportionality, transparency and fairness. In particular we support the recommendation that diversionary disposals should not attract a criminal record or be subject to employer disclosure. Include Youth has long advocated for this change, having had first hand evidence of the detrimental, disproportionate and long term negative effect on the life chances of a child in accessing education, training and employment opportunities.

We also endorse the Review report’s recommendation (21.b) that young people who offend should be allowed to apply for a clean slate at age 18.

⁶⁶Op cited at note 3 page 79

⁶⁷ Ibid page 94

16. Issues still to be addressed

As noted at the outset of this submission, in addition to there being a number of important areas where we believe that the Review Report falls significantly short of what was required there are also a number of notable and disappointing gaps within this Report. It would have been most helpful for the Review Team to have identified those issues it felt it was precluded from addressing due to time or resource constraints. Include Youth has identified the following issues as key gaps in sees within the report.

Demonisation

Include Youth was most surprised not to find any examination of this issue within the Report. It is a worsening phenomenon and forms the backdrop to the general climate of intolerance towards children and young people, highlighted by the UN Committee on the Rights of the Child in 2008.

Given the challenge involved in shifting both media and political debate away from the negative stereotyping of young people towards a serious and balanced discussion of the underlying causes of anti-social and offending behaviour among some young people, it would appear to Include Youth to have been hugely important to have addressed this issue within the Review of Youth Justice.

Clearly there is an urgent need for a high level joined up Strategy to address this issue, led by OFMDFM but with involvement from all government departments. We believe this issue needs to be addressed within the current consultation.

Participation

Disappointingly, aside from a small number of references to the participation of children and young people in particular processes within the youth justice system the Report does not address the systemic failure across the entire youth justice system to ensure that the views of young people are heard and accommodated.

As one of the four general principles of the UN Convention on the Rights of the Child this article not only establishes a right in itself but must be considered in the interpretation and implementation of all other Convention rights. It represents a cross cutting issue for the entire youth justice system as underlined by the UN Committee on the Rights of the Child's General Comment No 10 " *the right of the child to express his/her views freely in all matters*

*affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice”.*⁶⁸

As such Include Youth would have expected to see an assessment of compliance with Article 12 across all aspects of the youth justice system. Instead the Review report limits its assessment of Article 12 compliance to judicial proceedings and the setting of bail conditions. While acknowledging that other recommendations may indirectly contribute to promoting Article 12, for example recommendation 12 on the need for specialised training and accreditation for the legal profession and the judiciary, the only recommendation which directly addresses the child or young person’s Article 12 rights is that in relation to the participation of young people and their parents in the setting of any bail conditions such that they understand and fully accept their implications.⁶⁹

In line with international standards Include Youth would have wished to have seen a much more thorough evaluation of the application of Article 12 in all stages of the criminal justice system *“from the pre-trial stage, when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. (it also applies) through all stages of adjudication and disposition, as well as implementation of the imposed measures.”*⁷⁰

Include Youth wishes to see consideration given within the current consultation to the following recommendation we made to the Review of Youth Justice:

“All criminal justice agencies and related government departments and agencies should have internal processes to ensure that the views of young people involved with the criminal justice system are heard and accommodated. Meaningful participation of young people in all aspects of the criminal justice system should be monitored by CJINI and RQIA. Law, policy and practice development and implementation should be based on consultation with all relevant stakeholders and particularly children and young people, their families and their communities.”

⁶⁸ Op cited at note 47

⁶⁹ Op cited at note 3 Recommendation 9. c

⁷⁰ UN Committee on the Rights of the Child (92w009) General Comment No 12 on the Right of the Child to be Heard, UN Committee on the Rights of the Child

Complaints

The Report confines its assessment and recommendations regarding complaints to complaints by young people against the PSNI. We comment below on the Review Report's recommendation regarding complaints against the PSNI before highlighting other aspects of the criminal justice system where the Report failed to explore the issue of complaints.

While we welcome the acknowledgement of the Police Ombudsman's office's failure to provide an accessible and effective complaints mechanism for young people, an issue which Include Youth has been working with the Ombudsman's office to address, we are concerned at the apparent shift in focus within the subsequent recommendation away from addressing this issue to a recommendation around the development of locally based complaints procedures.

The Office of the Police Ombudsman was established pursuant to the Patten Report and was a key component of the peace agreement through the provision of an independent, impartial and effective mechanism to investigate and deal with complaints against the PSNI.

We believe that the focus needs to remain firmly on challenging the Police Ombudsman's office to become an effective complaints mechanism for children and young people as was envisaged in the legislation.

As noted above we were surprised not to find any examination of whether a child or young person's right to complain is respected, protected and fulfilled across **all** relevant aspects of the criminal justice system, and not just in relation to policing.

Include Youth's submission to the Review of the Youth Justice System in Northern Ireland outlined the relevant international standards relating to complaints.

The United Nations Committee on the Rights of the Child's General Comment No 5 states that 'children's special status creates real difficulties for them in pursuing remedies for breaches of their rights, there must be effective, child-sensitive procedures available to children and their representatives, including child-friendly information, advice, advocacy – including support for self-advocacy - and access to independent complaints procedures and to the courts with necessary legal and other assistance.'⁷¹

⁷¹ UN Committee on the Rights of the Child (2003) General Comment No 5 General Measures of Implementation for the Convention on the Rights of the Child, paragraph 8

UN General Comment Number 10 states that children deprived of their liberty have the right to make requests or complaints. The Havana Rules (Rules 75,76,77 and 78) state that each young person should be able to make requests or complaints to the director of the detention facility and his/her authorised representative; to the central administration, judicial authority or other authorities through appropriate channels; and to an independent office. They should have the right to request help from family members, legal counsellors, humanitarian groups, or others to make a complaint.

In Include Youth's experience young people involved with the criminal justice system do not make complaints:

"Cos they work for the government and we're criminals – they're hardly gonna believe us over the cops".

"People are happy enough to complain like, but it's just not worthwhile, it won't make a difference".

This may be for a variety of reasons. Young people do not contextualise what has happened to them in a rights framework. They have little self-confidence and minimal trust in the systems administering the procedures. Many also have direct experience in the past of being let down by adults, professionals, systems, and understandably have no confidence in institutions' policies or their workers.

A recent CJINI inspection of Hydebank Wood YOC examined the issue of complaints. It found more awareness of the complaints procedure than on its previous inspection in 2007 as well as greater access to complaints forms; this included among under 18s.⁷² While this is a positive development, worryingly the inspection reported highlighted a continued lack of quality assurance of investigation of complaints and a lack of analysis of complaints to identify trends. The inspection report repeated recommendations from 2007 that a formal system of quality assurance of complaints be introduced⁷³ and that requests and complaints should be routinely analysed to identify patterns or trends⁷⁴. Without these issues being addressed it is unlikely that the lack of confidence in the complaints system expressed by young people above will be reduced any.

⁷² Criminal Justice Inspection Northern Ireland, HM Inspectorate of Prisons and RQIA (2011) Report of an unannounced short follow-up inspection of Hydebank Wood Young Offenders Centre, CJINI, Belfast. paragraph 2.84 and 2.85

⁷³ Ibid paragraph 2.87

⁷⁴ Ibid paragraph 2.88

Encouragingly CJINI's most recent inspection report on Woodlands JJC reported that following its previous inspection in 2008 the JJC had updated its complaints policy, that it was providing children with a child friendly copy of the complaints procedure on arrival. It concluded that most complaints were minor in nature and appeared to have been dealt with appropriately.⁷⁵

Among the recommendations in relation to complaints made by Include Youth to the Review of the Youth Justice System were the following:

- **Recognising the inequality of arms with regards to vulnerable young people making complaints against individuals and/ or criminal justice agencies, all children in the formal criminal justice system should have the right to an independent advocacy service, which should be consistent from first point of contact (i.e. arrest) through the adjudication process to disposal and continuing whilst they have contact with the formal system. This independent advocate should ensure that young people are informed and understand the processes in which they are involved at all times, are supported to participate in these processes and empowered and assisted to make complaints where necessary**
- **Children should have the right to complain to an open, transparent, accessible and effective complaints process**
- **Complaints systems must be independently monitored through the Criminal Justice Inspectorate Northern Ireland (CJINI) and Regulation and Quality Improvement Authority (RQIA)**
- **Children and young people deprived of their liberty should have the right to make complaints to an identifiable, impartial and independent body.**

We repeat these recommendations in this submission and urge the Department of Justice to proceed with their implementation.

Compliance with the non-discrimination principle

The Review report devotes a short, four page section to what it describes as 'Special Groups' (and indeed 'other special groups' within the body of this section). Included within this heading are looked after children, children with mental health difficulties, Traveller

⁷⁵ Op cited at note 62

children, children with special educational needs and learning disabilities and gay, lesbian and bisexual young people.

In our view this is unfortunate terminology to have chosen, having as it does overtones of paternalism and separateness. It would have been far preferable to have framed the particular issues affecting such vulnerable children and young people within the youth justice system under a heading of compliance with Article 2 of the UN Convention on the Rights of the Child (non-discrimination) for example.

While all children and young people involved in the youth justice system are inherently vulnerable due to their situation, those groups of children and young people listed above tend to be disproportionately represented in the youth justice system, raising issues around compliance with the non-discrimination principle, a point acknowledged by the Review report. In view of this Include Youth would strongly contend that they warranted more than a paragraph at best or a few lines as was the case in relation to young Travellers within the criminal justice system. **It would appear to be a case of these groups being over represented in the youth justice system yet the issues affecting them being under addressed within this review of the system.**

We do not accept the Review report's apparent attempt to justify this lack of scrutiny of young Travellers' experience on the basis that while they were aware of research "*indicating some tensions between the 'travelling community' (sic) and the police (they) received no particular representations about youth justice*".⁷⁶ The onus was primarily on the Review Team, supported by the Secretariat, to research the issues affecting young Travellers within the youth justice system. If, due to time or resource constraints this were not possible then the Review team could have usefully identified this as an area requiring further examination.

The Review report found no evidence that 'either Protestants or Catholics were disproportionately targeted', a finding which the report appears to confine to the issue of policing and ascribe to improvements in policing. They do not comment on the question of whether any particular religious or community grouping is over represented within the prison system or their treatment within the prison system.

This was an issue addressed directly by the Review of the Northern Ireland Prison Service which found that "*in all prisons there is a disproportionate number of Catholics*".⁷⁷ The Review of Prisons report also found "*disproportionalities in treatment and outcomes in all*

⁷⁶ Op cited at note 3 page 88

⁷⁷ Op cited at note 56 Page 38

male prisons, in areas that depend principally on staff discretion”,⁷⁸ with Catholics faring worse than Protestants in relation to a range of matters including prison discipline and temporary release.

Figures obtained by the Children’s Law Centre would suggest an over representation of young, Catholic males in Hydebank Wood Young Offenders Centre. As of 25 March 2011, 17 under 18 year olds were being detained in Hydebank Wood Young Offenders Centre. Two of these boys were recorded as being Presbyterian, three were recorded as having no religion and 12 were recorded as being Catholic.⁷⁹

While guarding against any over interpretation of what was simply a ‘snapshot’ of religious affiliation in Hydebank Wood at a particular time, these figures when coupled with the Review of Prison’s findings in relation to differential outcomes by religious affiliation, would strongly suggest that this is an area that warrants proper examination.

One group of young people whom the Review report seems to have overlooked is young girls and women. In response to this criticism being made the Chair of the Review Team John Graham accepted that they may “have missed a trick in not saying something more specific about the way in which girls are treated right across the youth justice system”.⁸⁰

Given this acknowledgement there is now an onus on the Department of Justice to carry out a full examination of how young girls are treated within all aspects of the youth justice system and to identify recommendations for change which it can then take forward.

17. Strategic and Practical Arrangements for Delivery

We welcome the attention paid in the Report to the delivery mechanisms required to ensure that we have a first class, effective and human rights compliant youth justice system. We concur with the Review report’s identification as a serious issue “*the absence of effective prioritisation of children and young people and leadership at the top*”.⁸¹

The report makes a number of proposals regarding the most appropriate structures and mechanisms for the strategic and practical delivery of services to children and young people

⁷⁸ Ibid

⁷⁹ Statistics obtained by Children’s Law Centre from Hydebank Wood Nominal Roll 25 March 2011, referenced in Children’s Law Centre Response to the Independent Youth Justice Review Team’s Review of Youth Justice in Northern Ireland (2011)

⁸⁰ Op cited at note 50 Oral response from John Graham, Chair of the Youth Justice Review Team to question from Dr. Linda Moore University of Ulster

⁸¹ Op cited at note 3 page 95

in general and in relation to youth justice in particular. These include the establishment of a Ministerial Committee which along with the Criminal Justice Delivery Group and the Criminal Justice Board would take overall responsibility for implementing the recommendations in the Review report.

Include Youth understands that the Junior Ministers in OFMDFM are currently undertaking a review of all of the structures that currently exist to deliver on government's commitment to children and young people, with a view to ensuring the best structures to progress this work, as well as to better aligning existing structures to deliver on the 10 year strategy for children and young people.⁸²

Include Youth has been critical of how the existing structures, including the Ministerial Sub-Committee, the Children's Champions mechanism and those structures that exist to oversee the implementation of the Children and Young People's Strategy have failed to demonstrate meaningful outcomes for children and young people. Given this any proposed new structure such as a vamped up Ministerial Committee would have to operate in a substantially different way.

We welcome OFMDFM's ongoing review of existing structures. We would expect this Review to involve consultation with the children and young people's sector amongst others and we are keen to have the opportunity to feed into such a review. We believe it would make more sense to return to a consideration of what structures would be most effective to oversee the delivery of youth justice, including the recommendations of the Review report, once the outcomes and recommendations of the OFMDFM led review are known.

18. Next Steps

The current consultation process runs until the end of December 2011. Our concerns regarding the consultation process have been highlighted earlier in this submission. The Minister has indicated that following a period of analysis he will bring forward his conclusions as early as possible in the New Year to the Executive, to the Justice Committee and to the Assembly if legislative change is required.⁸³

In our view the commitment to independence of the process established at the outset of the review should continue to be respected at all stages of the process. We believe that it

⁸² Ministerial response to written Assembly question AQW 1777/11-15

⁸³ Op cited at note 50 Address by the Minister for Justice Mr. David Ford MLA

would have been preferable for the current consultation exercise to have been conducted outside of the Department of Justice. However, recognising that this hasn't happened and in the spirit of ensuring the ongoing independence of the process, we recommend that the Minister for Justice establishes an independent, transparent mechanism by which the results of the consultation will be collated and analysed.

It would appear from the consultation document that the Department of Justice has not undertaken any screening or EQIA as yet. It states that screening will be carried out once the final recommendations are agreed and associated policies are developed.⁸⁴ However, Section 75 of the Northern Ireland Act 1998 requires public authorities to assess policies for impact on equality of opportunity at the earliest stage of their policy development.⁸⁵ **We therefore recommend that the Department of Justice revisit its Section 75 obligations and undertake the necessary screening exercise and any resultant EQIA.**

Following on from the consultation and its outcomes a time bound implementation plan with an accompanying independent oversight mechanism will need to be established.

While the Review report itself did not make any recommendations regarding oversight of an implementation plan post consultation, the Chairperson of Review Team John Graham did acknowledge the importance of this issue being taken into consideration once the consultation period is over so that there is accountability within a specified time frame.⁸⁶ Such oversight mechanisms were established to oversee the implementation of both the Patten and the Criminal Justice Review's programmes of reforms. The Minister for Justice has accepted the need for an oversight mechanism for the implementation of the recommendations of the Prison Review.⁸⁷

We believe that it is absolutely essential that a similar oversight mechanism is created to oversee the implementation of the Youth Justice Review and would suggest that a role that CJINI needs to play in this regard should be considered.

⁸⁴ Department of Justice (2011) Consultation on the Report of the Review of the Youth Justice System Paragraphs 2.6 and 2.7

⁸⁵ Equality Commission for Northern Ireland (2010) Section 75 of the Northern Ireland Act: A Guide for Public Authorities. ECNI: Belfast.

⁸⁶ Op cited at note 50 Oral response by John Graham, Chair Youth Justice Review Team to a question from Michael Maguire, Chief Inspector CJINI

⁸⁷ Northern Ireland Assembly Hansard Prison Review: Final Report 14 November 2011 page 315

Conclusion

In conclusion, Include Youth welcomes the consultation on the findings of the Review of the Youth Justice System in Northern Ireland and the opportunity it provides for government to make necessary changes to ensure a child rights compliant youth justice system, one which is fit for purpose.

A great many of the reforms recommended by the Review Team, while welcome, are long overdue and now require urgent action, not only by the Department of Justice but by a number of other government departments including the Department for Health, Social Services and Public Safety, the Department of Education, the Department for Employment and Learning and the Department of Social Development. The need for a cross departmental response to taking forward the recommendations of this Review cannot be overemphasised.

We wish to draw particular attention to the need for the recommendation regarding the removal of under 18s from Hydebank Wood Young Offenders Centre and their accommodation within Woodlands Juvenile Justice Centre to be implemented with all urgency, given the fundamental right to life issues involved.

We look forward to the issues raised in this response being addressed and taken forward in the ongoing review of youth justice. We are very happy to discuss any aspect of this response if that were considered helpful. We look forward to continued engagement on this important theme in the coming year and beyond.

