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**Include Youth Submission to the Youth Justice Review Team's
Review of the Youth Justice System in Northern Ireland**

promoting best practice with young people at risk

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Include Youth Submission to Youth Justice Review

Executive Summary

1. Introduction

Include Youth is an independent non-governmental organisation (NGO) that has been in existence since 1979. The organisation promotes the rights and best interests of and best practice with young people in need or at risk. We undertake activities aimed at influencing public policy and policy awareness – both locally and nationally. Include Youth works directly with young people to support them to be engaged with policy decision-making processes and to improve their employability. We produce resources and provide training, information and support to practitioners and organisations.

Include Youth welcomed the Minister for Justice's announcement to conduct a review of youth justice¹, following the commitment undertaken as part of the Hillsborough Agreement in February 2010, to establish a:

*'Review of 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.'*²

Include Youth has built on the work of the Manifesto, the Background Paper and associated research in our submission to the Youth Justice Review which is grounded in the direct views and experiences of children and young people and practitioners working with them.

2. Child rights compliant youth justice system for Northern Ireland

The commitment contained in the Hillsborough Agreement to conduct a Review of Youth Justice stated that there would be a 'review of how children and young people are treated at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.'³

¹ Minister for Justice David Ford MLA announces a Review of Youth Justice in Northern Ireland, Assembly Official Report (Hansard) 1 November 2010

² Agreement at Hillsborough Castle, 5 February 2010, paragraph 7

³ ibid

Include Youth believes that currently the youth justice system in Northern Ireland is in breach of children's rights and human rights standards in a number of significant areas. Most serious among these are the low minimum age of criminal responsibility; the continued detention of children at Hydebank Wood Young Offenders Centre (YOC) and concomitant conditions endured – both will be dealt with in separate sections below – and the absence of the best interests principle in the youth justice system.

A further serious issue regarding lack of child rights compliance, is the failure to incorporate the best interests of the child as the paramount consideration in all decisions affecting children in the law, policy, practice and the administration of justice, youth justice and policing law, policy and practice in line with United Nations Convention on the Rights of the Child (UNCRC) and other relevant international child rights and human rights standards. For example, Part 4, Article 53(1) of the Justice (Northern Ireland) Act 2002 states that the principle aim of the youth justice system is to protect the public and that the authorities should have regard to the welfare of children affected by the exercise of their functions. In addition, the Mission Statement of the Youth Justice Agency is 'to reduce crime and to build confidence in the youth justice system.'⁴

Recommendations

- Government should take measures to ensure that the youth justice system in Northern Ireland is fully compliant with international human rights and children's rights standards. A rights-compliant youth justice should promote and guarantee:
 - generic *early intervention* (at the point of need and regardless of age)
 - provision of *universal* services to ensure that children fulfil their potential, families are supported, and the best interests of the child are paramount regardless of age
 - service provision that is *preventative*, steering children away from behaviour that might lead to offending
 - service provision that is *diversionary*, securing creative and realistic alternatives to criminal justice
- Responsibility for youth justice (services and policies) should be transferred to a childcare-based government department.

⁴ www.youthjusticeagencyni.gov.uk

- Part 4, Section 53(1) of the Justice (Northern Ireland) Act 2002 should be amended to state that the ‘principal aim of the youth justice system is to promote the best interests of the child, prevent offending by children and protect the public.’
- The Mission Statement of the Youth Justice Agency should be amended to include the paramourncy principle of the best interests of the child.
- Children’s Champions in each government department should ensure the incorporation of a child rights/United Nations Convention on the Rights of the Child (UNCRC) proofing in the development of all legislation and policies affecting children and young people.

3. Participation of children and young people

There are concerns regarding the rights of children in general and especially in the youth justice system, to participate in all matters or decisions affecting them in a manner consistent with their age, understanding and maturity. Regarding children in the justice system concerns arise regarding the extent to which they are able to meaningfully participate in legal proceedings due to: problems around information provision; lack of awareness of their rights; lack of independent advocacy; and inaccessibility of the legal processes, particularly court proceedings.

Other issues arise regarding young people’s right to participate in policy development and service delivery. Children describe widespread concerns that their views are not taken seriously by adults. Despite some recent developments, children and young people in conflict with the law often experience their involvement in policy development as non-existent or tokenistic at best. Young people want to see real impact of their views having been taken seriously and acted upon. This requires appropriate structures developed in consultation with young people, which will ensure meaningful engagement where their views are respected, considered and taken seriously, and where decisions are reflected back to children taking part in consultation about impact.

Recommendations

- All criminal justice agencies and related government departments and agencies should have internal processes to ensure that the views of young people who are service users are heard and accommodated. Meaningful participation of young people in all aspects of the criminal justice system should be monitored by Criminal Justice Inspectorate Northern Ireland (CJINI) and Regulation and Quality Improvement Authority (RQIA). Law, policy and

practice development and implementation should be based on consultation with all relevant stakeholders and particularly children, young people, their families and communities.

- Children and young people are entitled to receive consistent and high-quality independent advocacy at all stages of the criminal justice system from arrest to disposal and resettlement.
- Children should receive accessible information that takes account of their particular circumstances.
- All solicitors and barristers, who work with young people in conflict with the law, should only be permitted to do so following a period of specialized professional training and accreditation. Professional associations should be established, through the Law Society of Northern Ireland and the Bar Council of Northern Ireland, which should oversee accreditation and selection to a panel of appropriately skilled and qualified legal practitioners in the area of child justice.
- The duty to consult with children under section 75 of the Northern Ireland Act 1998 should be implemented fully.

4. Minimum age of criminal responsibility (MACR)

At 10, the age of criminal responsibility for children in Northern Ireland is lower than in most similar countries, and significantly lower than the age at which children can legally assume other responsibilities. For example, the age of sexual consent is 16, the voting age is 18. The age of criminal responsibility sits very incongruously alongside these other developmental milestones. Such milestones in essence bestow varying degrees of responsibility onto a young person are targeted at ages 16 to 18.⁵

Evidence shows that prosecution at an early age increases the chances of reoffending. Children must be supported to accept responsibility and address their behaviour and any underlying issues of unmet need in a way which does not label or criminalise them.

Recommendations

- The minimum age of criminal responsibility should be raised to 16 years of age in line with international standards and consistent with other jurisdictions.

⁵ Goldson, B. (ed) (2008) Dictionary of Youth Justice, Cullompton: Willan

- Children below this age who display concerning or harmful behaviours should be recognised as children with often complex needs. Interventions directed towards children below the minimum age of criminal responsibility should comprise a range of differentiated services and systems such as family support, social services, family group conferencing and secure care provision only as a last resort and in rare cases where that level of provision is established as essential.
- Safeguards should be introduced to ensure that the child has automatic access to independent advocacy services and formal judicial processes, particularly in cases where responsibility is disputed and where proposed responses to the child's alleged behaviours involve deprivation of liberty in secure accommodation. Current budgetary allocation to criminal justice agencies for provision of services to children in the justice system should be re-directed to a ring-fenced budget within Department of Health, Social Services and Public Safety (DHSSPS). All victims harmed as a result of any act which would be considered a criminal offence if it were carried out by a young person over the age of 16 years should receive appropriate reparation, information and support from the state.

5. Research and statistics

While there is no specific mention in the international standards with regards to data collection and dissemination, the UN Committee on the Rights of the Child has made unequivocal statements in General Comments 5 and 10 in relation to this issue. Specifically they have stated that:

“The Committee is deeply concerned about the lack of even basic and disaggregated data on inter alia the quantity and the nature of offences committed by children, the use and average length of duration of pre-trial detention, the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion), the number of convicted children and the nature of sanctions imposed on them”⁶

The Committee emphasises that such information is necessary to ensure appropriate planning and delivery of youth justice services.

⁶ UN Committee on the Rights of the Child (2007) General Comment No 10 on Children's Rights in Juvenile Justice, United Nations Committee on the Rights of the Child

Current Situation

In Northern Ireland there is a dearth of comprehensive, easily accessible, up-to-date statistical information with regards to children and young people who come into contact with the criminal justice system. In order to gain any sort of statistical overview it is necessary to contact each agency individually. This makes the system unnecessarily complex and unwieldy, and we submit that a system could easily be established, especially when one considers that every interaction a young person has with the criminal justice system is recorded.

Recommendation

Include Youth recommends that quarterly and annual statistical bulletins are published recording young people's journey through the system. The data should include (but not be confined to), numbers and age of young people arrested, offences, disposals, living situations and outcomes (e.g. re-offending).

6. Cross-cutting themes

The youth justice system must take cognizance of the impact of the legacy of the conflict. Despite the fact that many children today have grown up in a 'peaceful' time in Northern Ireland's history does not detract from the persistent and long lasting social, economic, civil and political impact of the conflict.

Current issues for marginalised children and young people include: paramilitarism and vigilantism; 'control' of housing estates and physical space; segregated space; sectarianism; differential policing, including PSNI use of informers or 'touts'; and the security led culture within the prisons.

In addition, more 'hidden' problems which persist as a consequence of the legacy of the conflict include: issues of mental health, inter-generational trauma, domestic violence, poverty and education.⁷ It has been well recognised that factors associated with the conflict and with a society emerging from conflict have impacted severely on child and

⁷ See Commissioner for Children and Young People (2009) *Children's Rights: Rhetoric or Reality A Review of Children's Rights in Northern Ireland 2007/08*: NICCY and McAlistar et al (2010) *Childhood in Transition Experiencing Marginalisation and Conflict in Northern Ireland*, Belfast: Queen's University Belfast, Save the Children and Princes Trust for detailed explorations of the social and economic impact of the conflict on children and young people within disadvantaged and marginalised communities.

adolescent mental health in Northern Ireland.⁸ The Chief Medical Officer estimated that more than 20% of young people in Northern Ireland are suffering “*significant mental health problems*” by their 18th birthday.⁹ The inter relationship between poverty and the conflict is deep rooted and enduring. Finally, one of the most striking and disturbing features of the continuing legacy of the conflict is the pervasiveness of violence and the threat of violence on the young people’s conversations, viewpoints, feelings and experiences and the extent to which it has been normalised. The result of this normalisation of ‘abnormal’ experiences according to one researcher has been “chronic anger, lack of trust in adults, isolation and feelings of marginalisation, bitterness at the other community or at the police, distrust of all authority, feelings of exclusion and marginalisation or lack of contact with or knowledge of the ‘other community.’”¹⁰

Recommendations

- Long term investment and resourcing should be determined by need in all communities particularly those that experience structural inequalities exacerbated by enduring poverty and the legacy of conflict.
- Universal service provision to all children and families with targeted early intervention and family support directed to those requiring additional services to deal with domestic violence, parental mental health or alcohol/substance misuse problems, challenges at school, lack of age appropriate play and leisure, need for parenting programmes.
- Full comprehensive Child and Adolescent Mental Health (CAMHS) provision to be available for all children in Northern Ireland.

7. Demonisation of children and young people

Children and young people in Northern Ireland are increasingly viewed in a negative way, as a ‘problem’ which requires the identification of a ‘solution’. This issue is compounded for children in conflict with the law. The role of the media in negative stereotyping of children and young people has been crucial, with children often presented negatively in

⁸ DHSSPS (2005) *A Vision for a Comprehensive Child and Adolescent Mental Health Service – The Bamford Review* November pp 15-16

⁹ Chief Medical Officer (1999) *Health of the Public in Northern Ireland: report of the Chief Medical Officer, 1999: Taking care of the next generation* Belfast DHSSPS.

¹⁰ Smyth, M. Et al (2004), *The Impact of Conflict on Children in Northern Ireland*, Institute for Conflict Research: Belfast, p99

media reports or political debates – as a threat, a nuisance or anti social. Research has identified the potential impacts of such negative representations on young people as including: depression; anger; escapism through alcohol misuse; self-fulfilling prophecy; breakdown in inter-generational relations. Solutions have largely failed to address the complexity of issues, instead focusing on greater regulation and criminalisation of children and young people.

Recommendations

- Government should engage with all relevant parties to provide public information regarding the complexities of the lives of many young people in the youth justice system.
- Government should develop public education initiative and deliver public awareness campaigns explaining the significance and effectiveness of non-criminal justice interventions in establishing inclusive and long-term community safety.
- Children’s Champions in each government department should ensure that language and terminology used in relation to children and young people does not create or reinforce negative stereotypes and reflects the diversity and complexity of children and young people’s lives, identities and experiences in Northern Ireland.
- The BBC should be designated as a public authority under Section 75 of the Northern Ireland Act 1998. This would place legal obligations on the BBC to have due regard to the need to promote equality of opportunity between certain categories including the age category. A module on children’s rights, encompassing child protection, should be incorporated into all journalism courses.
- Government departments should consider adopting a positive pledge, similar to that included in the Northern Ireland Policing Board’s recent Children and Young People’s Thematic, that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping.
- Government should develop annual media awards for positive reporting of issues affecting children and young people.

8. Policing

The PSNI is generally the first point of contact for children and young people with the criminal justice system, acting “as one of the main gatekeepers in the criminal justice

system”.¹¹ As such it is vital that the Review of Youth Justice fully examines current legislation, policies and practices regarding policing and children and young people and based on that review makes relevant recommendations for change.

Release of images of children and young people

Following the release to the media and to communities of images of children and young people under 18 by the PSNI, via Operation Exposure in Derry and following on from rioting at an Ardoyne interface in North Belfast in July 2010, Include Youth raised serious concerns regarding the rights, including potentially, the right to life, and protection from all forms of violence, of those children and young people identified.

Recommendation

- As a matter of urgency the PSNI should respond to the Policing Board’s Thematic Inquiry into Children and Young People Recommendation 13 by stating its intent to comply with, setting out a short time frame within which the policy will be amended and detailing how the amended policy will be communicated to all relevant PSNI officers.

Use of stop and search powers

Figures and anecdotal evidence suggest that the powers to stop and search are frequently used against children and young people. There is no doubt that the experience of being stopped and searched for children and young people, which is at best distressing and at worst frightening, is likely to have a very significant impact on their individual perceptions of the PSNI and relations between the PSNI and young people within communities in general. Young people’s experience is that once they have had any contact with the PSNI or the youth justice system the probability of them being stopped and searched is increased.

The Northern Ireland Policing Board’s Thematic Review of Children and Young People noted the increase both in the use of Section 44 of the Terrorism Act 2000 and an increase in the use of section 21 of the Justice and Security Act 2007 power to stop and question a person.¹² However as referred to earlier, the Thematic Review states that “it is not possible to quantify the full extent to which section 44 TACT, or any other stop, search and

¹¹ O’Mahoney, D. And Deazley, R. (2000) *Juvenile Crime and Justice – Review of the Criminal Justice System in Northern Ireland*. Criminal Justice Review Group . Research Report No 17, p 37

¹² Northern Ireland Policing Board (2011) *Human Rights Thematic Review Children and Young People*, NIPB, page 91

question power, has been used against children and young people”,¹³ as the PSNI quarterly statistical reports to the Policing Board do not record the age of the person stopped, searched and/or questioned. The reason given for this is that the PSNI cannot require a person to disclose their date of birth. Include Youth believes that this is not acceptable and that an approximate age could be collected by police officers.

Recommendations

- All powers to stop and search children and young people should be exercised in compliance with human rights, in particular, with key provisions of the United Nations Convention on the Rights of the Child (UNCRC), including Article 2 (non-discrimination) and Article 3 (best interests).
- The use of stop and search powers should also comply with the PSNI’s obligations under Section 75 of the Northern Ireland Act 1998 in relation to the age ground.
- Consistent with Recommendation 20 in the Policing Board’s Thematic Review, quarterly data supplied to the Policing Board on the use of stop and search powers should include data on the approximate age of the person against whom the powers have been used, in order to enable the Policing Board (and others) to monitor statistics and to address any concerns regarding particular patterns that may emerge.

Police bail

Currently the PSNI enjoys broad powers to detain children and young people charged with offences under the Police and Criminal Evidence (Northern Ireland) Order (PACE). These admissions are generally for short periods of time, ensuring that children are held securely pending a court appearance. Research demonstrates that use of remands impact disproportionately on looked after children, particularly those in residential care. While children and young people in residential care may behave in challenging ways, it is clear that currently custody is not being used as a last resort.

Recommendations

- The test for the remand of children and young people charged with offences but not convicted should be amended to a single test which would be applied by the PSNI and the courts.

¹³ Ibid pages 92-93

- The test for bail should conform to international child and youth justice principles within the framework of children’s rights standards.
- A reformed test for the remand of children and young people must be established to suit the needs of children and young people. Flexibility should be built in to ensure that the background and individual circumstances of the child are taken into account.
- The lack of a bail address should never be used as a basis for remanding a young person.

Young people’s experience and perceptions of policing

Research over the past decade or more, since the publication of the Patten Report in 1999, has demonstrated that young people’s perceptions and their experiences of the PSNI have remained largely negative.

Recommendations

- The PSNI should make a firm commitment to the implementation of all of the recommendations contained in the Policing Board’s Thematic Review. It should be operationalised via an implementation plan which contains targets, time frame and indicators. The PSNI should address all outstanding, relevant recommendations from the UN Committee on the Rights of the Child, including the need for translation of child rights compliant policies into practice.

Anti-Social Behaviour Orders (ASBO)

The use of Anti-Social Behaviour Orders (ASBO) against children and young people has been heavily criticised by a wide range of both international and domestic human rights bodies. Youth’s long standing opposition to the use of ASBOs against under 18s is well documented and is based on the following grounds among others: the definition of ‘anti-social behaviour’ is subjective; as civil orders there is a lower burden of proof – hearsay and professional evidence is admissible in ASBO hearings; civil and criminal law are blurred; reporting restrictions can be lifted, raising child protection concerns and setting ASBO proceedings apart from other court processes involving under 18s (while thankfully this hasn’t happened to date the potential remains); ASBOs can be used in conjunction with a prison sentence, effectively resulting in a form of ‘release under licence’.

Despite their extensive use against children and young people in England and Wales the use of ASBOs against children and young people in Northern Ireland has been significantly more limited, a result Include Youth would contend, of the vociferous opposition by non-governmental organisations (NGOs) and others to their introduction and subsequent close monitoring of their use. However, evidence from children and young people and their workers, would suggest that the 'threat' of an ASBO has been substituted for an ASBO and is being utilised to the same end of controlling and regulating young people's behaviour.

Recommendation

- The Anti-Social Behaviour (Northern Ireland) Order 2004 should be amended to prohibit the use of ASBOs against under 18s.

Training: Recommendation

The PSNI should develop and initiate a module on children's rights training as a core component of the PSNI's Student Officer Training Programme. Other PSNI training courses including Probationer and Specialist Training courses should also incorporate a relevant focus on both the principles and the practical application of the United Nations Convention on the Rights of a Child and other relevant rights based instruments and standards in operational policing.

Speedy Justice

Include Youth has a number of serious concerns regarding the application of Discretionary Disposals by the PSNI to children and young people. It is apparent from our engagement with the PSNI that their policy intent for Speedy Justice is to give clear priority to the victim's views as to whether discretionary powers should be used in relation to individual incidents, leading to inconsistent application of the law in contravention of international and domestic human rights standards.

Include Youth has serious concerns that Speedy Justice has the potential to be amongst the most disproportionate of all criminal justice outcomes. Amongst the outcomes associated with the use of Speedy Justice are financial reparation, an apology, and 'anti-social behaviour counselling'.¹⁴ Include Youth is challenged to understand how such outcomes

¹⁴ Information discussed at meeting held by Include Youth with PSNI T/Superintendent Andrea McMullan on 11 March 2011

can be proportionate to the level of offence involved when others in this category (Informed Warnings and Restorative Cautions) have no such requirements.

We have serious concerns that the introduction of Speedy Justice has been introduced in breach of section 75 statutory duty requirements.

Recommendation

- Given the serious concerns outlined above regarding the application of Speedy Justice to under 18s, coupled with the range of disposals already in existence which are available to deal with low level offending amongst young people, the PSNI should no longer apply Speedy Justice to under 18s.

9. Early intervention and family support

International research consistently demonstrates that children and young people are more likely to be involved in offending or anti-social behaviour if they leave school early, have special needs, live in poverty, have truanted or been excluded from school, have spent time in residential care or have experienced neglect or abuse within their families.

Currently the youth justice system has a role, and at times a significant and lead role, in providing responses to these children categorized as at 'risk of offending' and their families. Include Youth firmly believes that priorities for action based on early intervention, prevention and the provision of services necessary to support children and young people in need/ at risk are essential to reduce the number of children and young people coming into contact with the criminal justice system. Early intervention services should be supported but not directed by the justice system in Northern Ireland – but rather through a partnership which is led by Department of Health Social Service and Public Safety (DHSSPS), through Children's Services.

Recommendations

- Adequate, appropriate and well-resourced early intervention should be provided to identify, support and address the needs of children and their families.
- Policy and practices should avoid stigmatising or criminalising children and young people for welfare based concerns. Family support services should be provided through a social care framework and delivered by voluntary sector providers in partnership with local communities, families, children and young people. These services should not be delivered

by criminal justice agencies but by a range of relevant government bodies led by Department of Health Social Service and Public Safety (DHSSPS).

10. Diversion from formal criminal justice system

International standards are supported by a body of international evidence-based research that outcomes for children who have begun to get into trouble are significantly improved when they are diverted from the formal criminal justice system. It is essential to address the structural inequalities which pervade the lives of marginalized young people, families and communities, and to provide necessary support services in a non-stigmatising way enabling young people to reach their full potential and their families to be able to cope with the challenges facing them.

Currently children who have become involved in low-level, minor and non-persistent offending behaviour are dealt with by the formal system through a series of incremental disposals. Include Youth submits that some of the current processes within the formal system raise issues regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance. Current problems, particularly with regards to diversionary youth conferencing, include the fact that records can be disclosed even though it is not a criminal conviction; young people have raised concerns around informed consent and their ability to meaningfully participate; concerns around net-widening involving unnecessarily excessive and disproportionate responses to managing low-level challenging behaviour; lack of focus on the best interests of the child, and an over-emphasis on meeting the needs of victims – these are not be mutually exclusive concepts, the process must meet the needs of the young person.

Include Youth would like to see a clearer emphasis on diversion *away from* the formal criminal justice system, focusing on community responses provided through multi-agency processes, delivered through a social welfare framework, including the use of community based restorative justice approaches such as family group conferencing.

Recommendations

- Police officers should, as first point of contact with children in conflict with the law, act as gatekeepers, diverting them out of the formal system and redirecting children and their families to welfare-based support services within the community. Referral and assessment

of the child's and families needs by the appropriate agency should be expedited and lead to the development of an individualized plan of support for child and family and victim if necessary.

- Resources currently targeted towards Diversionary Youth Conferencing should be redirected community based and holistic interventions such as the Family Support Hub model.
- A comprehensive critical and independent qualitative research project should be commissioned to examine the extent to which current youth conferencing processes, including diversionary youth conferencing, comply with proportionality and child rights standards; what the real experiences of and outcomes for young people, their families and victims has been.
- Detailed proposals as brought forward for consultation on record keeping to ensure transparency and rights compliance.

11. Diversion from re-offending

There is a concern that there are too many disposals available for young people and as a result young people and their families become confused about what is being given to them. Many of the young people we work with have had a multitude of various Orders and have been through various multi-layered processes, dealing with many professionals along the way.

Young people have some very practical suggestions with regards to what may support them to stop offending. These include:

- more programmes which include activities and events
- support to access education, training and employment
- support in tackling drug and alcohol use
- general support in the form of a key-worker who can be an advocate for them in carving their way through the what can often be the maze of 'orders' and conditions

'See if I had a job, I wouldn't do any crime.'

"You need support – to get a job or stay off drugs, help to try and get on with your life."

Delay

The issue of delay from arrest to adjudication and disposal means that effectively justice is denied to many young people in conflict with the law. Much research has been undertaken which shows that delays in the processing of cases can have a much more negative impact on young people. It is well documented that most young people who get involved in trouble-making / offending behaviour, grow out of it over time and do not continue to offend into adulthood. Diversion is most effective when the child or young person is supported to take responsibility for their actions as soon as possible after the act has been committed and guilt admitted. It is imperative that all disposals are dealt with as speedily as possible, otherwise the young person may not remember the incident upon which they are being adjudicated, or in the interim they may have continued to engage in other forms of offending behaviours, and become more deeply ensconced in the criminal justice system.

Recommendations

- The Youth Justice Agency should be re-defined to that of a specialist and sole body overseeing youth justice arrangements for under 18s.
- The Youth Justice Agency's remit should be changed to include: meeting the needs and protecting the rights of young people in conflict with the law.
- An action plan should be drawn up by the criminal justice agencies which is time bound and resourced to reduce delays between arrest and sentencing whilst ensuring due process and access to justice.
- Diversionary youth conferencing should be removed from the system which should automatically have a positive impact on reducing delay within the formal justice system, by reducing caseloads and concomitant pressure on Public Prosecution Service, PSNI, Youth Justice Agency, Northern Ireland Court Service and judiciary.

12. Custody

Currently, children as young as 10 years of age can be detained in custody. Children are be detained at Woodlands Juvenile Justice Centre (JJC) unless they are boys aged between 15-17 years old, in which case they can be detained at Hydebank Young Offenders Centre (YOC). It is current practice to detain all 17 year olds at the young offenders centre, save in exceptional circumstances.

The Prison Review Team also established under the terms of the Hillsborough Agreement, has recently recommended that 'children and young people under 18 should not be held in Hydebank Wood. Suitable accommodation for all children that meets the best interests of the child should be found on the Woodlands site or elsewhere,' following suit from numerous independent inspections, reports and recommendations from the UN Committee on the Rights of the Child. Include Youth welcomes this recommendation.

It is essential that deprivation of liberty should be a measure of last resort and for the minimum necessary period of time. Children who are deprived of their liberty have the right to education and health, including mental health; to protection; to advocacy; to be treated with dignity and respect. Custodial services must ensure that children receive all necessary services, support and care.

Recommendations

- Custodial sentences should be decreased, ensuring that deprivation of liberty is a 'last resort', for the shortest possible period, and confined to those presenting serious, immediate risks to others, in line with international standards.
- The detention of children under the age of 18 at Hydebank Wood Young Offenders Centre (YOC) should be ended and all enabling legislation should be repealed.
- The Minister for Justice should make a public commitment to end the detention of under 18s at Hydebank Wood Young Offenders Centre (YOC) and establish a transition action plan, with a clear timetable for completion with cross departmental support at Executive level.
- During the transitional phase any young people detained at the young offenders centre should be entitled to full implementation of their rights. Specialist child and adolescent psychiatrist should be appointed, based in Northern Ireland, to advise the criminal justice agencies; efforts should be made to establish a relationship between a child or young person with mental health needs and Child and Adolescent Mental Health Services (CAMHS) in advance of their release; close working relationships and care pathways should be developed between specialist CAMHS and youth justice teams.
- Criminal justice agencies should collect statistics on the mental health of the children and young people that are within the criminal justice system and these should be shared with the health service.
- An independent and fully resourced advocacy services should be established within custody.

- All children deprived of their liberty should be treated with ‘humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age’ in line with Article 37 (c) and 40 United Nations Convention on the Rights of the Child (UNCRC).
- All professionals working with children and young people should be aware of and receive training about the United Nations Convention on the Rights of the Child (UNCRC) and children’s rights (Articles 4 and 42, UNCRC) and should be trained to respond to the special needs of children in line with the Beijing Rules, the Riyadh Guidelines and the European Prison Rules.
- Education and training should be a core provision for young people in custody.
- All children under the compulsory school leaving age should participate in education with statutory responsibility for the education of children in custody should be transferred from the Department of Justice to the Department of Education and all children should be entitled to access the national curriculum.
- All outstanding recommendations in relation to education and vocational training from the Northern Ireland Human Rights Commission’s report ‘Still in Our Care’, the Independent Monitoring Board’s annual reports, the Criminal Justice Inspectorate Northern Ireland Inspection Report and the United Nations Committee on the Rights of the Child should be fully implemented.

13. Rehabilitation and reintegration

The reconviction rates for young people involved in offending behaviour – 70% of young people discharged from custody had re-offended within one year; coupled with the cost of custody¹⁵; without even considering the best interests of the children and young people concerned provide a strong imperative for greater investment in rehabilitation.

Supporting young people with resettlement on release from custody is a central factor in enabling them to make a successful transition from custody back into the community and to stop re-offending. Reducing the rate of reoffending is in everybody’s interests. It is also, from government to local communities, everybody’s responsibility. When one considers the profile of young people in custody with all of the problems and challenges they face, including lack of educational attainment, lack of qualifications, a history of unemployment, homelessness, mental health problems, drug and alcohol addictions, lack of family support,

¹⁵ Estimated to be £78, 750 per prisoner for 2009-2010 Source: Northern Ireland Assembly Research and Library Service Briefing Note on Cost Per Prisoner Place. NIAR 283-10 Paper 153/10 .

resettlement and reintegration cannot be the responsibility of the Youth Justice Agency or Prison Service alone, out of necessity must involve all relevant government departments and agencies, as well as various voluntary and community organisations - in short a joined up approach.

There must be a seamless transition from custody back into the community, with a key worker to support the young person in terms of accessing appropriate accommodation, health services, education, training, and employability schemes for example.

Among the barriers to operationalising policies aimed at supporting rehabilitation are the continued high numbers of children on remand, whose pending criminal charges could be compromised by participating in particular programmes, and the fluctuating custody population.

Recommendations

- The overriding emphasis from committal to release should be geared towards the re-integration of young people into their communities and into society.
- All of the outstanding recommendations on rehabilitation and reintegration in both the Criminal Justice Inspectorate Northern Ireland and Independent Monitoring Board's reports should be implemented.
- Specialised employability schemes should be supported to provide training and pre-employment opportunities for custody experienced young people.
- The needs of this particular group of vulnerable young people should be addressed within the NEETs Strategy (for young people not in education, employment or training).
- There should be consideration given to the appropriateness of disclosure of criminal records, particularly in relation to juvenile cautions and convictions, other than Schedule 1 offences.

14. Complaints

It is our experience at Include Youth that very often young people involved with the criminal justice system do not make complaints. This may be for a variety of reasons, including the fact that often they do not contextualise what has happened to them in a rights framework, and even if they do so, they may have little confidence either in themselves or in the systems administering the procedures to persuade them to take the hugely brave step of making a complaint. In addition, they may also have had direct

experience in the past of being let down by adults, professionals, systems, and therefore do not feel confident in placing their trust in such systems.

In particular, problems exist in relation to advocacy services, complaints mechanisms and independent representation for children and young people regarding the PSNI and while in detention. The experience of children and young people in relation to complaints against the PSNI has been far from satisfactory and would indicate that the mechanisms are not currently working effectively for children and young people. There is a lack of awareness among young people of the existence and role of the Police Ombudsman, and the Ombudsman currently does not record complaints for children under the age of 16. In relation to custody, it is essential that children have access to information and independent advocacy and an open, transparent, independent and robust system to deal with their complaints.

Recommendations

- The Police Ombudsman's Office should conduct an urgent review of the effectiveness of its police complaints system for all children and young people, with a view to developing a tailored strategy and action plan for engaging with children and young people.
- The strategy and action plan should address raising awareness of the service among all children and young people, but particularly those most vulnerable, a dedicated system by which to record complaints from all ages of children and young people, children and young people friendly mechanisms by which to record complaints and children's rights training for all staff in the Police Ombudsman's Office.
- 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 to 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).
- The Youth Justice Review Team should revisit the recommendations from the Criminal Justice Inspectorate Northern Ireland (CJINI) 2008 report regarding the complaints procedures at Woodlands Juvenile Justice Centre (JJC) and affirm their implementation.
- Children and young people deprived of their liberty should have the right to make complaints to an identifiable, impartial and independent body.

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Include Youth submission to the Youth Justice Review in Northern Ireland

1. Introduction

Include Youth welcomed the Minister for Justice's announcement to conduct a review of youth justice¹⁶, following the commitment undertaken as part of the Hillsborough Agreement in February 2010 to establish a:

*'Review of 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.'*¹⁷

The Hillsborough Agreement devolved policing and justice powers to the Northern Ireland Assembly, and marked a seminal moment in the transition process for Northern Ireland as a society emerging from conflict. The Review of Youth Justice is a central element in the devolution of policing and justice. It provides 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 process for children, young people, their families and wider communities within which they live.

While addressing the rights and best interests of all children and young people, the Youth Justice Review must focus particularly on the needs and circumstances of marginalised children and young people, who, as research has shown are disproportionately over-represented in the criminal justice system.¹⁸ Include Youth has worked for over 30 years with and on behalf of children and young people who are the most vulnerable and at risk. We have a strong track record of policy advocacy in promoting the rights of children in the criminal justice system. Our policy work is grounded in and informed by the voices and experiences of children in the system and the practitioners who work with them, and by relevant research in the context of international human rights standards and obligations. In 2008 Include Youth produced a Manifesto for Youth Justice in Northern Ireland, and accompanying Background Paper¹⁹, both of which have been submitted to the Youth Justice Review Team. We are aware that this work has made a significant contribution to the current debate.

¹⁶ Op cited at note 1

¹⁷ Op cited at note 2

¹⁸ Op cited at note 5, p63; Op cited at note 7; McAra, L and McVie, S (2010) Youth Crime and Justice Key Messages from the Edinburgh Study of Youth Transitions and Crime, *Criminology and Criminal Justice* 10(2):179-209

¹⁹ Haydon, D. (2008) *Developing a Manifesto for Youth Justice in Northern Ireland: Background Paper*, Include Youth

Include Youth has built on the work of the Manifesto, the Background Paper and associated research in our submission to the Youth Justice Review. Recognising that children and young people come into conflict with the law for a range of complex reasons, responses and recommendations cannot be considered by the Review Team without understanding 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.²⁰ In Northern Ireland there is the additional dynamic of the legacy of the conflict and the persistence of formal and informal punishments within a society deeply divided by sectarianism.²¹ These significant and inter-connected issues require a whole-child approach involving cross-governmental responsibility, acknowledging that a multi-disciplinary and co-ordinated approach between economic, social education, employment, health, youth, police and community and voluntary agencies is essential, and must be addressed by the Youth Justice Review.

Since the appointment of Justice Minister David Ford on 12 April 2010 and the establishment of the first Northern Ireland Assembly Justice Committee²², Include Youth has strongly advocated for the creation of a Youth Justice Review which would deliver on the commitments undertaken at Hillsborough. Through a series of Briefing Papers²³ and direct evidence to the Justice Committee,²⁴ we have raised concerns regarding the Terms of Reference; the proposed timescales; the constitution of the Review Team, particularly the fact that it comprises three part-time members only; the structure of the Review, particularly the lack of clarity on the role, remit and status of the Reference Group, and the Stakeholder Group referred to in the Ministerial Statement of 1 November 2010²⁵; the role and remit of the Secretariat highlighting that independence from government, including the civil service and Youth Justice Agency, must be an essential component of the Review; the lack of cross-departmental buy-in to the Review process. While we were pleased that the Justice Minister extended the timeframe for the Review from March until June 2010, we remain concerned that it is an unachievable target for

²⁰ Op cited at note 5

²¹ Op cited at note 7

²² The Northern Ireland Assembly Committee for Justice held its inaugural meeting at Parliament Buildings on 22 April 2010

²³ Include Youth has produced a series of Briefing Papers in relation to the Youth Justice Review, including papers on the Need for Independence of the Youth Justice Review and Relevant International Human Rights Standards. These are available on Include Youth's website www.includeyouth.org

²⁴ Include Youth evidence to the Justice Committee, 4 November 2010

²⁵ Op cited at note 1

three part-time Review Team members to conduct the far-reaching Youth Justice Review envisaged under the terms of the Hillsborough Agreement.

Include Youth has invested heavily in the Youth Justice Review. Through our Young Voices project we have supported children and young people from across Northern Ireland in community and custody, to express their views and inform our submission. In addition we have undertaken in partnership with colleagues from the Youth Safety Network – Terry Enright Foundation, Northern Ireland Alternatives and Challenge for Youth – an extensive consultation exercise that has not only informed this submission, but will form a stand-alone submission to the Youth Justice Review from children in marginalised communities. Moreover, we have facilitated a number of direct engagements between the Review Team and young people both in the community and in Woodlands Juvenile Justice Centre (JCC) and Hydebank Wood Young Offender’s Centre (YOC). We have also enabled those working directly with children at risk, to express their views through a number of practitioners’ fora.

Following this Introduction, Include Youth’s submission continues in Section 2 by outlining key strategic changes required to achieve a child rights compliant youth justice system in Northern Ireland; Section 3 deals with the importance of children and young people’s right to participation; Section 4 sets out Include Youth’s position regarding the minimum age of criminal responsibility; Section 5 considers the issue of research and statistics; Section 6 sets the context by highlighting cross-cutting issues, including the legacy of the conflict, impact of poverty and marginalisation, and issues around mental health; Section 7 addresses the issue of demonisation of children and the influence this has on public opinion and the public policy agenda; Section 8 deals with the issue of policing; Section 9 raises the importance of early intervention and family support; Section 10 addresses diversion from the formal criminal justice system; Section 11 raises the issue of diversion from re-offending; Section 12 addresses custody; Section 13 examines rehabilitation and resettlement; Section 14 looks at the issue of complaints; and conclusion is provided at Section 15. We have produced a submission based on reflective and studied analysis of existing research, current policies and direct involvement with young people’s lives and experiences, and the practitioners who support them. The submission is supported by Include Youth staff and by its Board.

2. Child rights compliant youth justice system for Northern Ireland

International standards

The Hillsborough Agreement notes that its proposed Review of Youth Justice should consider the treatment of children and young people 'at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice'.²⁶

There is a significant body of research-based evidence, including Include Youth's *Background Paper*, that demonstrates the youth justice system in Northern Ireland breaches international children's rights and human rights standards. Most serious breaches are: the low minimum age of criminal responsibility; the continued detention of children at Hydebank Wood Young Offenders Centre (YOC); and the absence of the best interests principle in the youth justice system. The best interests of the child should be the paramount consideration in all decisions affecting children in the policy, practice and the administration of justice and policing consistent with the United Nations Convention on the Rights of the Child (UNCRC) and other relevant international child rights and human rights standards. For example, Part 4, Article 53(1) of the Justice (NI) Act 2002 establishes that the principle aim of the youth justice system is to protect the public and that the authorities should have regard to the welfare of children affected by the exercise of their functions. In addition, the Mission Statement of the Youth Justice Agency is 'to reduce crime and to build confidence in the youth justice system.'²⁷ These statements prioritise public protection and crime reduction over the best interests of children who, for whatever reasons, are in conflict with the law.

Recommendations

- The State should take measures to ensure that the youth justice system in Northern Ireland is fully compliant with international human rights and children's rights standards. A rights-compliant youth justice should promote and guarantee:
 - generic *early intervention* (at the point of need and regardless of age)
 - provision of *universal services* to ensure that children fulfil their potential, families are supported, and the best interests of the child are paramount regardless of age
 - service provision that is *preventative*, steering children away from behaviour that might lead to offending

²⁶ Op cited at note 2

²⁷ Op cited at note 4

- service provision that is *diversionary*, securing creative and realistic alternatives to criminal justice
- Responsibility for youth justice (services and policies) should be transferred to a childcare-based government department.
- Part 4, Section 53(1) of the Justice (Northern Ireland) Act 2002 should be amended to state that the 'principal aim of the youth justice system is to promote the best interests of the child, prevent offending by children and protect the public.'
- The Mission Statement of the Youth Justice Agency should be amended to include the paramouncy principle of the best interests of the child.
- Children's Champions in each government department should ensure the incorporation of a child rights/United Nations Convention on the Rights of the Child (UNCRC) proofing in the development of all legislation and policies affecting children and young people.

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3. Participation of young people

International Standards on Participation

United Nations Committee on the Rights of the Child's General Comment No 12 states: "the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention".²⁸ As one of the four general principles of the Convention this article not only establishes a right in itself but should be considered in the interpretation and implementation of all other rights in the Convention.

General Comment No 12 on the right of the child to be heard provides the most comprehensive elucidation of how Article 12 should be applied and interpreted in all contexts of children's lives, including juvenile justice. It observes that the child's right to be heard must be respected during all stages of the judicial process "*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 the stages of adjudication and disposition, as well as implementation of the imposed measures*".²⁹

Other applications of Article 12 with regard to juvenile justice detailed in General Comment No 12 include the use of diversion when a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance, prompt and direct information regarding any charges, child friendly surroundings and proceedings and protection of the privacy of children and young people within proceedings.³⁰

The UN Committee General Comment No 10 on Children's Rights in Juvenile Justice underlined the application of Article 12 within the context of juvenile justice, asserting that "*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*".³¹

In 2002 and again in 2008, the UN Committee made recommendations in respect of the right to participation within judicial proceedings, stating that the UK government should: "promote,

²⁸ UN Committee on the Rights of the Child (2009) *General Comment No 12 on the Right of the Child to be Heard*, UN Committee on the Rights of the Child

²⁹ *Ibid* paragraph 58

³⁰ *Ibid* paragraphs 59-61

³¹ *Op cited at note 6*

facilitate and implement, in legislation as well as in practice ... in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child.”

In addition, participation is one of the key basic principles in the Council of Europe Child-Friendly Justice Guidelines and also contained within the Beijing Rules.

Significantly General Comment No 10 also draws attention to the UN Committee on the Rights of the Child’s view that “the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights”.

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) state in paragraphs 3, 37 and 50 that “young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control...youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs...young persons themselves should be involved in the formulation, development and implementation (of plans and programmes)”.

Current situation

Listening to the views of children and young people in developing law, policy and practice

While there have been consultations carried out with young people, opportunities for young people in conflict with the law to be consulted are less frequent. Established youth participation networks/ forums are often unable or unwilling engage harder to reach young people. This requires investment of time and resources to explore the most appropriate methods and supporting their involvement. Meaningful participation involves informing children and young people of their rights, addressing issues of concern to them, publicly acknowledging their views and contributions and providing feedback about the impact of their suggestions on the development of policies and practice.

The outworking of Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) and Section 75 of the Northern Ireland Act, 1998, is central to the work of Include Youth. Established debates have increased familiarity with the language of participation but increasingly those advocating for youth empowerment argue for an end to rhetoric on participation and the delivery on a commitment to young people’s influence in policy and

practice affecting their lives. There is also widespread concern about the growing disengagement of young people from formal politics and democratic processes.

Participation within criminal justice processes

Children have the right to be meaningfully involved in decisions that affect their lives. Article 12 in conjunction with Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) mean that children must be enabled to express their views and decision-makers taking proper account of those views is a necessary component of making a decision in the best interests of the child. This is of crucial importance in regards to a child's right to participation in all aspects of the criminal justice system, particularly judicial proceedings.

Information provision

The structures and processes within the criminal justice system are complex and challenging particularly for children and young people. Frightening, disorientating and difficult to understand is how children often record their experiences of the criminal justice system. Arrest, adjudication, disposal, through to resettlement - each delivered by agencies with their own layers of bureaucracy, systems, services, language, professionals - result in young people being confused and isolated from the process.

Information should be provided in a form accessible to children and young people, appropriate to their age. This is particularly relevant given the high number of young people with special educational needs, communication difficulties and low levels of literacy coming into contact with the criminal justice system. Knowledge at all stages of the process from pre-arrest through to post-disposal is essential if children and young people are to be active participants in the processes which will dramatically impact on their lives. Leaflets or posters may be of little use to young people who have low levels of literacy.

Court proceedings

Children require access to age-appropriate information relevant to their case. This should include information about what will happen during the case and in court, and the consequences of different options available to the court for their lives, families and personal relationships. They should also be given full support and independent advocacy to formulate and, where necessary, articulate their views.

The Northern Ireland Court Service has undertaken work to raise public awareness about its role and operation, much of which has been targeted at young people, young people who

appear as defendants continue to describe feelings of alienation and exclusion from effective participation in their own defence. Vulnerable young people in particular should be protected and they should be guaranteed access to justice and to the court regardless of their understanding of the process and knowledge of their rights. In addition, young people often find judges, including district judges intimidating.

“Can’t understand what’s being said. It’s all big, stupid words – especially the Judge.”

“You don’t listen to anything – there’s no point. The only thing you listen out for is the bit where they say ‘4 MONTHS!’ ”

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

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

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

Awareness of Rights

Research has shown that knowledge among young people in the justice system about their rights is limited ³² Many young people do not understand their rights or the avenues open to them to protect their rights, either due to their age, literacy, language problems, special educational needs or learning disability.

“I haven’t a clue about my rights...the right to remain silent?”

“It doesn’t really matter what your rights are in here [YOC], screws’ll always find an excuse, a way to put one over on you, to justify what they do.”

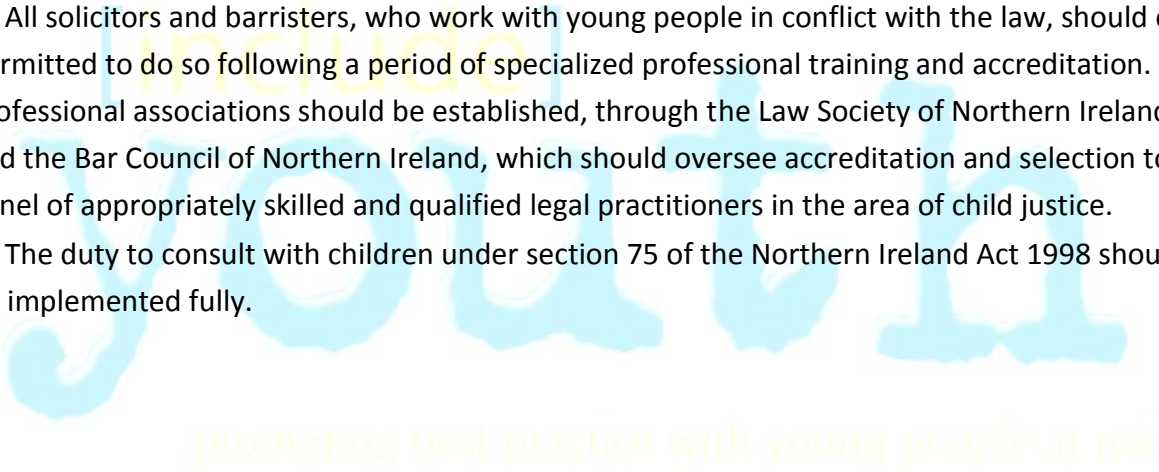
“You need to know your rights because you need to know if your rights are being abused.”

“You should have them read out to you, and they should be supplied on the wall, everywhere.”

³² Quinn, K and Jackson, J. (2003) *The Detention and Questioning of Young Persons by the Police in Northern Ireland*, Institute of Criminology and Criminal Justice, School of Law, Queen’s University Belfast.

Recommendations

- All criminal justice agencies and related government departments and agencies should have internal processes to ensure that the views of young people who are service users 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, young people, their families and communities.
- Children and young people are entitled to and receive consistent and high-quality independent advocacy at all stages of the criminal justice system from arrest to disposal and resettlement.
- Children should receive accessible information that takes account of their particular circumstances.
- All solicitors and barristers, who work with young people in conflict with the law, should only be permitted to do so following a period of specialized professional training and accreditation. Professional associations should be established, through the Law Society of Northern Ireland and the Bar Council of Northern Ireland, which should oversee accreditation and selection to a panel of appropriately skilled and qualified legal practitioners in the area of child justice.
- The duty to consult with children under section 75 of the Northern Ireland Act 1998 should be implemented fully.



4. Minimum age of criminal responsibility (MACR)

International standards

Although international standards do not identify a specific age of criminal responsibility they state that “the beginning of that age shall not be fixed at too low an age, bearing in mind the facts of emotional, mental and intellectual maturity”.³³ They establish that the notion of ‘responsibility’ needs to be carefully considered: “whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour”. This notes the close relationship between responsibility for criminal behaviour and other social rights and responsibilities, such as being able to marry or to vote.³⁴

In its General Comment No 10, the United Nations Committee on the Rights of the Child concludes that: “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable”.³⁵ The Committee recommends the age of 12 “as the absolute minimum age” and that State parties should “continue to increase it to a higher age level” such as 14 or 16.³⁶ In addition, the Beijing Rules advise that there should be “a close relationship between the notion of criminal responsibility and other social rights and responsibilities (such as marital status, civil majority etc)”.³⁷

In its General Comment No 10 the UN Committee makes it clear that while “a minimum age of criminal responsibility below the age of 12 years is considered ... not to be internationally acceptable ... a higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system, which in accordance with article 40(3) (b) of CRC, deals with children in conflict with the law without resort to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected”.³⁸

The thinking behind this guidance is further illuminated by the Chairperson of the United Nations Committee on the Rights of the Child in a lecture in Belfast in 2008:

“... the Committee clearly expressed the importance of raising it to 12, with a view to eventually raising it even further...in order to persuade State parties to seriously consider raising the age

³³ Office of the High Commissioner for Human Rights (1085) *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) Rule 4. See also the Council of Europe (2010) *Guidelines on Child Friendly Justice* : Council of Europe, paragraph 23.

³⁴ *Ibid*, Rule 4 Commentary

³⁵ *Op cited note 6*, paragraph 32

³⁶ *Ibid*, paragraph 32 and 33

³⁷ *Op cited note 33*, Rule 4 commentary

³⁸ *Op cited note 6* paragraphs 32 and 33

of criminal responsibility ..12 was decided as the absolute minimum age by the Committee ...furthermore, it was the general understanding of the Committee that industrialised, democratic societies would go even further as to raising it to an even higher age, such as 14 or 16".³⁹

In 2008 the UN Committee, not for the first time, criticised the UK government for its unacceptably low minimum age of criminal responsibility, recommending that it should raise the age in accordance with General Comment No 10 and notably paragraphs 32 and 33.⁴⁰

This recommendation has been supported by domestic human rights and children's rights bodies; both the Northern Ireland Human Rights Commission, in its statutory advice to government on a Bill of Rights for Northern Ireland⁴¹, and the Northern Ireland Commissioner for Children and Young People⁴², have recommended that government raise the minimum age of criminal responsibility in line with international best practice and the recommendations of the UN Committee on the Rights of Child.

Current situation

At 10, the age of criminal responsibility for children in Northern Ireland is lower than in most advanced democratic jurisdictions, and significantly lower than the age at which children can legally assume other responsibilities. For example, the age of sexual consent is 16, the voting age is 18. Children are judged as unable to buy cigarettes or serve on juries until 18; drive until 17; leave school or live independently until 16. The age of criminal responsibility sits incongruously alongside these other developmental milestones which, in essence, bestow varying degrees of moral and social responsibility to a young person.⁴³

Moreover, Northern Ireland does not compare favourably with other developed countries - the average minimum age of criminal responsibility (MACR) in Europe is 14. It is lower than the MACR in China, Turkey and Egypt – jurisdictions that many would regard to fall far short of upholding minimum human rights standards for their citizens.⁴⁴ In Scotland the age of criminal

³⁹ Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child *'The Convention on the Rights of the Child – from Geneva to Northern Ireland, Bringing Children's Rights Home'* Children's Law Centre Annual Lecture 13 March 2008 pages 12-13

⁴⁰ UN Committee on the Rights of the Child (2008) Concluding Observations. United Kingdom of Great Britain and Northern Ireland, paragraph 78 (a)

⁴¹ Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* page 135

⁴² Op cited at note 7, paragraph 8.18

⁴³ Op cited at note 5

⁴⁴ Muncie, J. and Goldson, B. (eds) (2006) *Comparative Youth Justice: Critical Issues*: Sage London

responsibility remains at 8⁴⁵, despite recent legislative changes which have raised the age of prosecution to 12 years. This means that children aged 8-12 are dealt with through Children's Hearings system.⁴⁶

Under 10 year olds

While young people under the age of 10 at times require additional support to deal with a range of challenges in their lives it is inappropriate to provide these services through a criminal justice framework. When children under the age of 10 years come to the attention of the PSNI, necessary referrals should be made to health and social care service providers. However the current process of recording behaviours of children under 10 years old within criminal definitions is not in the best interests of the child.

Interventions with children under the age of criminal responsibility

Evidence shows that prosecution at an early age increases the chances of reoffending.⁴⁷ Further, the attribution of a criminal record inhibits the progress of young people in education, training and employment while simultaneously damaging self-esteem. Research also indicates that there are no negative consequences to be seen in terms of crime rates from raising the age of criminal responsibility. International evidence suggests that states that have a higher age of criminal responsibility have not experienced higher rates of youth offending.⁴⁸

Include Youth recommends raising the age of criminal responsibility to 16 years, in line with evolving capacities and other social responsibilities. We recommend that the law should be amended to provide that all children under the age of 16 who engage in behaviour which would otherwise be considered a criminal offence, should be dealt with through a social care judicial framework, where all decisions are made in the best interests of the child and with services delivered through Children's Services. Include Youth disagrees with an incremental approach to MACR through which it is raised for all but the most serious offences – rape, sexual assault and murder.⁴⁹ This 'half-way house' approach fails to recognize that children who commit serious and harmful acts are profoundly troubled with significant mental and emotional health needs. It is precisely such children that require welfare-based rather than punitive interventions, based on a careful and informed assessment of need. Maintaining the

⁴⁵ Criminal Procedure (Scotland) Act 1995, Section 41

⁴⁶ Criminal Justice and Licensing (Scotland) Act 2010, section 52

⁴⁷ Op cited at note 19

⁴⁸ Dunkel, F., cited in Goldson, B. And Peters, E., 2000, *Tough Justice: Responding to Children in Trouble*, London: The Children's Society.

⁴⁹ Barnardos (2010) *From Playground to Prison The case for reviewing the age of criminal responsibility*: Barnardos

prosecutorial model with its high recidivism rates for these children fudges the issue and breaches of international standards – which at no point make a provision for a differentiated system based on the nature of offence.

Children must be supported to address troubling or offending behaviour and underlying issues of unmet need through processes that guard against criminalisation and labelling. Safeguards are essential to ensure that children have rights to independent advocacy services and formal judicial processes, particularly in cases where responsibility is disputed and where proposed responses to the child's alleged behaviours involve deprivation of liberty in secure accommodation. All decisions regarding placement of a child in secure accommodation must be taken by a judicial body, not through an administrative process.

These changes will require sufficient resources to meet the needs of all children identified as requiring immediate access to appropriate services. The government should also take the lead in instilling public confidence in the new measures – informing the public that this is not a 'soft' option nor is it 'letting off' children and young people - but is a more effective approach and will lead to better outcomes for children and families and safer communities for all.

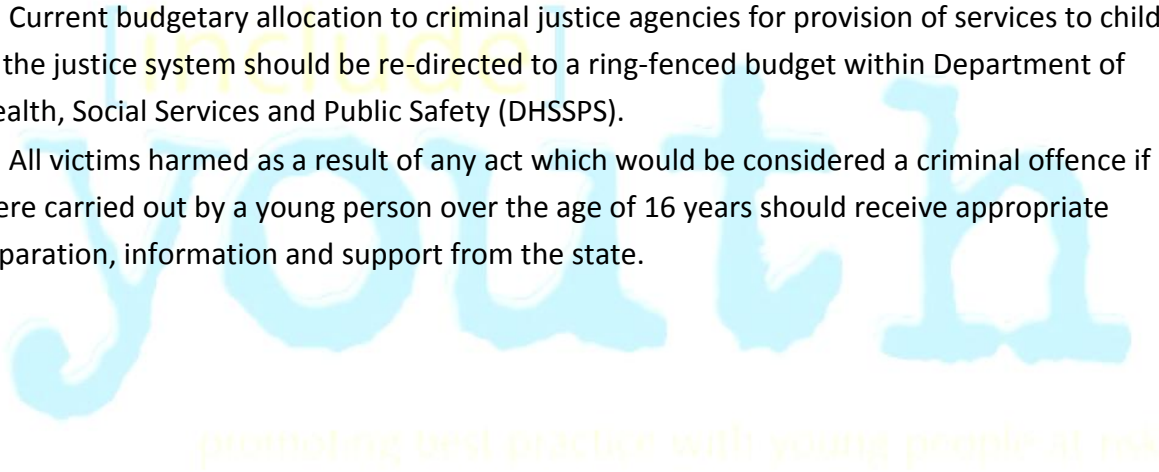
Raising the minimum age of criminal responsibility should be accompanied by a communication strategy including a public information and campaign. It is important that such a policy shift is not portrayed as undermining the interests of victims. The European Network of Ombudsmen for Children recognized that the rights of children who offend and victims were not mutually exclusive concepts and stated that 'their interests [victims] are not served by pursuing policies that fail to rehabilitate offenders and tend instead to make them more prone to offend and possibly more violent.'⁵⁰

Children and young people whose behaviours are considered harmful or pose a risk to themselves and others should be engaged through social care interventions which adopt the family group conference approach. Such an approach while considering the best interests of the child as central, will identify the impact of their behaviour and offer appropriate services that will ensure that positive outcomes for all concerned. Communities must be supported to run such processes for themselves with support from statutory agencies as required.

⁵⁰ European Network of Ombudsmen for Children (2003) *Juvenile Justice: Europe's children's champions challenge governments to respect young offenders' rights*, Stockholm: ENOC, p1

Recommendations

- The minimum age of criminal responsibility should be raised to 16 years of age in line with international standards and consistent with other jurisdictions.
- Children below this age who display concerning or harmful behaviours should be recognised as children with often complex needs. Interventions directed towards children below the MACR should comprise a range of differentiated services and systems such as family support, social services, family group conferencing and secure care provision only as a last resort and in rare cases where that level of provision is established as essential.
- Safeguards should be introduced to ensure that the child has automatic access to independent advocacy services and formal judicial processes, particularly in cases where responsibility is disputed and where proposed responses to the child's alleged behaviours involve deprivation of liberty in secure accommodation.
- Current budgetary allocation to criminal justice agencies for provision of services to children in the justice system should be re-directed to a ring-fenced budget within Department of Health, Social Services and Public Safety (DHSSPS).
- All victims harmed as a result of any act which would be considered a criminal offence if it were carried out by a young person over the age of 16 years should receive appropriate reparation, information and support from the state.



5. Research and statistics

International standards

While there is no specific mention in the international standards with regards to data collection and dissemination the United Nations Committee on the Rights of the Child has made unequivocal statements in General Comments 5 and 10 in relation to this issue. Specifically it states that:

“The Committee is deeply concerned about the lack of even basic and disaggregated data on inter alia the quantity and the nature of offences committed by children, the use and average length of duration of pre-trial detention, the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion), the number of convicted children and the nature of sanctions imposed on them”⁵¹

The UN Committee emphasises that such information is necessary to ensure appropriate planning and delivery of youth justice services.

Current situation

In Northern Ireland there is a dearth of comprehensive, easily accessible, up-to-date statistical information with regards to children and young people who come into contact with the criminal justice system. In order to gain an appropriate statistical overview it is necessary to contact each agency. This creates an unnecessarily complex and unwieldy system. An alternative system could be established easily, especially as every interaction a young person has with the criminal justice system is recorded.

Recommendations:

- Quarterly and annual statistical bulletins should be published recording young people’s journey through the system. The data should include (but not be confined to), numbers and age of young people arrested, offences, disposals, living situations and outcomes (e.g. re-offending)

⁵¹ Op cited at note 6

6. Cross – cutting themes

Legacy of the conflict

In operational policy and practice the youth justice system must take into consideration the impact of the legacy of conflict in Northern Ireland. Children and young people continue to experience the social, economic, civil and political consequences of living in a society in transition.

While much has been written about the impact of the conflict there is an acceptance that its effect on children and young people, throughout the conflict and since the 1998 Good Friday/Belfast Agreement, has been overlooked. In-depth research in communities by McAlister et al states that ‘scant attention⁵²’ has been paid to children and young people. Haydon and Scraton note that “while there are glimpses of the lives of children and young people during this period the full impact across three decades has not been fully identified, acknowledged or accommodated”.⁵³

The number and nature of the deaths of children and young people is frequently overlooked in official statistics. Of those killed during the conflict 40% were 24 years of age or under. Between 1969 and 2003, 274 children aged 17 or under and 629 young people aged 18-21 were killed.⁵⁴

The numbers of children and young people who were injured, experienced death or bereavement has never been quantified. However research conducted in 2005 found that an estimated 88,000 households were affected by the loss of a close relative, and 50,000 households contained at least one resident who was injured.⁵⁵ There is no reliable estimate of the number of children who experienced the imprisonment or internment of parents, siblings and close relatives, who experienced house searches or exiling or who witnessed shootings or other politically-motivated violence.

Figures for paramilitary attacks and beatings of young people, while likely to be seriously underestimated given the reluctance to report such attacks, provides some indication of the threat posed to young people by paramilitaries. Smyth et al estimate that between 1988 and 2002, 496 young people under the age of 20 received paramilitary punishment beatings and

⁵² Op cited at note 7, p23

⁵³ Haydon, D and Scraton, P (2008) ‘Conflict, Regulation and Marginalisation in the North of Ireland: The Experiences of Children and Young People’ in *Current Issues in Criminal Justice*. Volume 20 Number 1 pp59-78

⁵⁴ Op cited at note 10

⁵⁵ Hillyard, P., Rolston, B. and Tomlison, M. (2005) *Poverty and Conflict in Ireland: An International Perspective* Dublin: Institute of Public Administration/Combat Poverty Agency, p6

388 were shot, usually through the knees or thighs. In total 24% of Loyalist punishment beatings and 32% of Republican punishment beatings were against young people under 20 years of age.⁵⁶

Despite the formal acceptance of the PSNI by both main communities paramilitary type attacks continue with young people most likely to be on the receiving end. While the recorded figures for paramilitary attacks indicate a decline in recent years, figures released in January 2011 show a doubling of paramilitary style attacks within one year.⁵⁷ In addition, people made homeless due to paramilitary intimidation also increased by a third to 774 in 2009/2010, from 580 in 2008/2009.⁵⁸

While Include Youth currently works with young people who did not experience the height of the conflict directly they raise routinely conflict-related issues. These include paramilitarism and vigilantism (intimidation, violence and recruitment), 'control' of housing estates and physical space, segregated space and sectarianism, differential policing including police use of informers or 'touts' and the security-led culture within prisons.

Less obvious, but no less connected to the conflict and its legacy, are issues concerning mental health, inter-generational trauma, domestic violence, poverty and education.⁵⁹ It is recognised that factors associated with the conflict and with the emergence from conflict have impacted severely on child and adolescent mental health in Northern Ireland.⁶⁰ The Chief Medical Officer estimated that over 20% of young people in Northern Ireland are suffering "significant mental health problems" by their 18th birthday.⁶¹ Yet there has been a gross failure to recognise and respond to the long term consequences of trans-generational trauma. McAlister et al (2009) note that "the inter-relationship of unaddressed conflict-related trauma, interpersonal violence within families, continuing paramilitary intimidation, forced exiling, economic marginalisation and social exclusion constitute 'special circumstances' for children, young people and their families in Northern Ireland".⁶²

⁵⁶ Ibid

⁵⁷ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-ofmdfm/news-ofmdfm-260111-statistical-press-release-publication> accessed 21 March 2011

⁵⁸ Ibid. While these figures are not disaggregated by age it is likely that, based on previous patterns that a large percentage of the victims will have been young men.

⁵⁹ See Op cited at note 7 for detailed explorations of the social and economic impact of the conflict on children and young people within disadvantaged and marginalised communities.

⁶⁰ Op cited at note 7 pp 15-16

⁶¹ Op cited at note 9

⁶² Op cited note 7 p 25

The inter-relationship between poverty and the conflict is deep rooted and enduring. Horgan considers “there is a marked concentration of poverty in a relatively small proportion of Northern Ireland’s electoral wards. Many of these wards are in and around the areas most impacted by the conflict”.⁶³ In 2006, for example, of 566 wards 25 recorded child poverty above 75% compared with 180 out of 10,000 wards in Britain.⁶⁴

Child poverty levels in Northern Ireland are higher than in other jurisdictions within the UK. 29% of 122,000 children in Northern Ireland live in poverty⁶⁵ and 10% of children or 44,000 children live in severe poverty.⁶⁶ Between 2001-2004 short term poverty affected 27% of children in Northern Ireland compared with 22% in Britain while persistent poverty affected 21% of children in Northern Ireland compared with 9% in Britain.⁶⁷

Recent research by Save the Children ‘A Child’s Portion’ starkly illustrates the extent of under-resourcing of children’s services in Northern Ireland by comparison with other UK jurisdictions.⁶⁸ For example, the comparative spending on Sure Start provision is £80 per child in Northern Ireland compared with nearly £600 per child in England.

A striking and disturbing element of the continuing legacy of the conflict, is the pervasiveness of violence and the threat of violence in young people’s conversations, viewpoints, feelings and experiences and the extent to which it has been normalised. The result of this normalisation of ‘abnormal’ experiences is “chronic anger, lack of trust in adults, isolation and feelings of marginalisation, bitterness at the other community or at the police, distrust of all authority, feelings of exclusion and marginalisation or lack of contact with or knowledge of the ‘other community’”⁶⁹

Recommendations

- Long term investment and resourcing should be determined by need in all communities particularly those that experience structural inequalities exacerbated by enduring poverty and the legacy of conflict.

⁶³ Horgan, G. and Kilkelly, U (2005) *Protecting children and young people’s rights in the Bill of Rights for Northern Ireland Why? How?* Research commissioned by the Children’s Law Centre and Save the Children. P7

⁶⁴ McLaughlin, E. and Monteith, M. (2006) *Child and Family Poverty in Northern Ireland* Belfast: OFMDFM Equality Directorate Research Branch

⁶⁵ Magadi, M. And Middleton, S. (2007) *Measuring Severe Child Poverty in the UK*. Save the Children UK

⁶⁶ Ibid

⁶⁷ Save the Children and ARK. (February 2008) *Persistent Child Poverty in Northern Ireland* Belfast

⁶⁸ www.savethechildren.org.uk/en/54_9399.htm

⁶⁹ Op cited at note 10

- Universal service provision to all children and families with targeted early intervention and family support directed to those requiring additional services to deal with domestic violence, parental mental health or alcohol/substance misuse problems, challenges at school, lack of age appropriate play and leisure, need for parenting programmes.
- Full comprehensive Child and Adolescent Mental Health Services (CAMHS) provision to be available for all children in Northern Ireland.

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7. Demonisation of children and young people

International standards

The United Nations Committee on the Rights of the Child in 2008 highlighted “ the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringement of their rights”.⁷⁰ The UN Committee recommended that the government take “urgent measures to address the intolerance and inappropriate characterisation of children, especially adolescents within the society, including the media”.⁷¹

In 2003 Children’s Ombudspersons in 21 European states recorded that they were “very concerned at the tone of political and media debate and the direction of public policy and legal changes concerning juvenile offenders in many of our countries”.⁷²

Current situation

Despite a cross-departmental 10 Year Children’s Strategy for Northern Ireland which includes ensuring that all children live in a society which respects their rights, there is increasing research evidence that children and young people in Northern Ireland are represented negatively, as a ‘problem’ which requires the identification of a ‘solution’. Unfortunately, solutions have largely failed to address the complexity of issues, instead focusing on greater regulation and criminalisation of children and young people.

Examples of this increasing trend can be detected in recent policy initiatives which have proposed introduction of dispersal zones, fixed penalty notices for children, breached rights to privacy and protection through publication of images of children and permitted introduction of harmful mosquito devices by shopkeepers and others to discourage children and young people from gathering in the vicinity of their premises.⁷³

A more positive example in challenging the status quo has been the Northern Ireland Policing Board in its recent Thematic Review of Children and Young People, which recognised the pernicious role negative stereotyping plays in relation to policing and children and young

⁷⁰ Op cited at note 40 paragraph 24

⁷¹ Ibid paragraph 25

⁷² Op cited at note 50

⁷³ According to one retailer’s website, these are designed to be “*the solution to the eternal problem of unwanted gatherings of youths and teenagers in shopping malls, around shops and anywhere else they are causing problems*”. www.compoundsecurity.co.uk/teenage_control_products.html.

people. The inclusion of the following pledge “that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping” represents a very positive starting point for any organisation that is serious about respecting children and young people’s rights.

Role of the media

Young people in general

The media plays a significant and occasionally defining role in the negative stereotyping of children and young people. As a social group, children and young people are often represented negatively in media reports or political debates – as a threat, a nuisance or anti-social. Research by YouthNet and the British Youth Council in 2006 found that over 80% of young people considered that the representation of them as anti-social made it more difficult for them to communicate and interact with older people and led to a loss of respect.⁷⁴

These concerns were reiterated by the Northern Ireland Commissioner for Children and Young People (NICCY)– following a review of children’s rights, which found that children and young people, parents/carers and professionals identified the negative stereotyping of young people as an issue of serious concern. The review concluded that “the increasingly problematic conceptualisation of youth can mean that young people who wish to proactively engage in civil society encounter prejudicial attitudes and negative stereotypes when attempting to do so”.⁷⁵ Specific issues which children and young people highlighted as particularly problematic in this regard included “socialising together in public space and accessing shops and public amenities”.⁷⁶

Young people in conflict with the law

Include Youth’s Background Paper, *Developing a Manifesto for Youth Justice in Northern Ireland*, described negative stereotyping of children in conflict with the law as follows:

“They are defined as ‘trouble-makers’ and labelled ‘delinquent’ or ‘criminal’. In Northern Ireland high profile incidents of serious violence have been represented by politicians and in the media as inevitable outcomes of an escalating ‘crisis’ in the criminal and anti social behaviour of children and young people. Internal community conflicts, claimed breakdown in parental

⁷⁴ Youthnet and British Youth Council *The Voice Behind the Hood: Young People’s Views on Anti Social Behaviour, the media and older people*. 2006. Page 27

⁷⁵ Op cited at note 7, p75

⁷⁶ Ibid

responsibility and control, marginalised young people with increasing access to alcohol and drugs, and communities which are unable to self-regulate in the context of a deficit in official policing are “portrayed as evidence of individual and social pathology with families labelled ‘inherently evil’, their children as ‘scum’”.⁷⁷

Include Youth has found it increasingly difficult to shift media and political debate away from sensationalist reporting and commentary to a serious discussion and examination of the underlying causes of anti-social and offending behaviour among some young people.

Thomas Hammarberg, the Council of Europe’s Commissioner for Human Rights states, “people’s justified concerns about juvenile behaviour have been exploited for populist political purposes: children and young persons have been demonised and described as major threats to society”.⁷⁸

Impact on children and young people

Research has identified the impact of negative representations on young people including depression, anger, escapism through alcohol misuse; self-fulfilling prophecy; breakdown in inter-generational relations.⁷⁹

“Once you’re labelled a trouble maker, it’s really hard to shift that image – even if you’re trying not to get into trouble. The police will always come to you first if something has gone on in your area”.

Recommendations

- The government should engage with all relevant parties to provide public information regarding the complexities of the lives of many young people in the youth justice system.
- The government should develop public education initiatives and deliver public awareness campaigns explaining the significance and effectiveness of non-criminal justice interventions in establishing inclusive and long-term community safety.
- Children’s Champions in each government department and agency should ensure that language and terminology used in relation to children and young people does not create or reinforce negative stereotypes and reflects the diversity and complexity of children’s and young people’s lives, identities and experiences in Northern Ireland.

⁷⁷ Op cited at note 19, p14

⁷⁸ http://www.coe.int/t/commissioner/Viewpoints/090202_en.asp accessed 19 March 2011

⁷⁹ Childhood, Transition and Social Justice Initiative (2010) *Media Representations of Children and Young People*, Seminar Proceedings, Queen’s University Belfast, 13-14 September 2010, p11

- The BBC should be designated as a public authority under Section 75 of the Northern Ireland Act 1998. This would place legal obligations on the BBC to have due regard to the need to promote equality of opportunity between certain categories including the age category. A module on children's rights, encompassing child protection, should be incorporated into all journalism courses.
- Government departments should consider adopting a positive pledge, similar to that included in the Northern Ireland Policing Board's recent Thematic Review of Children and Young People, that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping.
- Government should develop annual media awards for positive reporting of issues affecting children and young people.

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8. Policing

International human rights standards

There are numerous international human rights standards and commentaries relevant to the policing of children and young people. The inclusion of the United Nations Convention on the Rights of the Child (UNCRC) in the revised PSNI Policy Directive Policing with Children and Young People, and its integration into a policy proofing tool is significant. However, the challenge for the PSNI is to ensure that the principles and standards set out in the United Nations Convention on the Rights of the Child (UNCRC) are translated into practice

The United Nations Committee on the Rights of the Child's General Comment No 10⁸⁰, which provides detailed guidance on Children's Rights in Juvenile Justice contains a number of sections of relevance to policing and children and young people. These include paragraphs 24-28 on interventions/diversion, paragraphs 96-97 on awareness raising and paragraphs 98-99 on data collection, evaluation and research. This General Comment also emphasises the need for governments to integrate a range of international standards, beyond the UNCRC itself, into their juvenile justice policy. These include the , the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules")⁸¹, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules")⁸², and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines")⁸³.

In recent years the UN Committee on the Rights of the Child has highlighted a number of aspects of government's legislation, policy and practice in relation to policing as being non child rights compliant. These have included the need for training on the UNCRC for police officers,⁸⁴ non integration of the general principles⁸⁵, use of plastic bullets against children⁸⁶, use of ASBOs against children⁸⁷, use of mosquito devices against children⁸⁸, retention of DNA of under

⁸⁰ Op cited at note 6

⁸¹ Op cited at note 33

⁸² UN Office of the High Commissioner for Human Rights (1990) *UN Rules for Juveniles Deprived of their Liberty* (the Havana Rules)

⁸³ Office of the High Commissioner for Human Rights, (1990) *United Nations Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines)

⁸⁴ UN Committee on the Rights of the Child (2002) *Concluding Observations. United Kingdom of Great Britain and Northern Ireland*, paragraph 21 and Op cited at note 40, paragraph 21

⁸⁵ Ibid (2002) paragraphs 23,26and 30; ibid (2008) paragraph 33

⁸⁶ Ibid (2002) paragraph 28; ibid (2008) paragraph 31

⁸⁷ Ibid (2008) paragraphs 35 and 80

⁸⁸ Ibid (2008) paragraph 35

18s,⁸⁹ and a number of issues in relation to youth justice including the minimum age of criminal responsibility⁹⁰.

Other relevant non child specific guidance provided by the United Nations includes the UN Code of Conduct for Law Enforcement Officials⁹¹ which highlights that in relation to the use of force law enforcement officers should “make every effort to exclude their use against children in particular”, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁹², in particular paragraph 2 on the development and deployment of non-lethal incapacitating weapons.

Importance of the role of policing in lives of children and young people

The PSNI is generally the first point of contact for children and young people with the criminal justice system acting “as one of the main gatekeepers in the criminal justice system”.⁹³

It is vital that the Review of Youth Justice examines thoroughly current legislation, policies and practices regarding policing and children and young people and based on that review makes relevant recommendations for change.

Include Youth’s experience through our direct participation and service-delivery work with marginalised young people in Northern Ireland over many years, has shown that there are many issues relating to policing which still need to be resolved. In response to this we have in recent years supported young people to express their views on policing and engage directly with police officers at both local and senior level, and with oversight bodies, including the Northern Ireland Policing Board, in an effort to improve policing for young people in this jurisdiction.

Release of images of children and young people

Following the release to the media and to communities of photographic images of children and young people under 18 by the PSNI, via Operation Exposure in Derry and following on from rioting at an Ardoyne interface in North Belfast in July 2010, Include Youth raised serious concerns regarding the rights of those children and young people identified.

⁸⁹ Ibid (2008) paragraph 37

⁹⁰ Ibid (2008) paragraph 78

⁹¹ UN Code of Conduct for Law Enforcement Officials (1979) Article 3 (c)

⁹² UN Basic Principles on the use of force and firearms by Law Enforcement Officials (1990), paragraph 2

⁹³ Op cited at note 11,p 37

Article 8, right to respect for private and family life and Article 10, freedom of expression of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998 were engaged in respect of this matter; Article 2, right to life was also potentially engaged.⁹⁴

Publication of the photographs breached Article 3, best interests; and Article 16, right to privacy; as well as a potential breach of Article 6, right to life; and Article 19, protection from violence of the United Nations Convention on the Rights of the Child (UNCRC). These articles establish a 'duty of care' on the part of state agencies including the PSNI for the health, well being and right to life of children within its jurisdiction.

The United Nations Committee on the Rights of the Child, which monitors state compliance with the UN Convention on the Rights of the Child, in its most recent examination of the UK government,⁹⁵ expressed concern that the government had not taken sufficient measures to protect children from public 'naming and shaming' and recommended that the government "ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy".⁹⁶

In addition to the international and domestic children's rights/human rights standards there are also significant PSNI policy directives with which the decision to release images of under 18s appeared to be in contravention. These were the PSNI Policing with Children and Young People Policy Directive and the PSNI Policy Directive on Child Protection.

During consultation with Include Youth's Young Voices project,⁹⁷ young people identified similar and additional concerns to those raised above. These included:

'It's making them targets', 'targets to the other side, if you show them pictures of prods the Catholics target them, if you show them pictures of Catholics Protestants target them', 'it's a load of crap to be honest, they shouldn't be putting pictures of young people through people's doors.'

⁹⁴ The ongoing threats to children and young people's safety from vigilante type groups should not be underestimated. At the time of the release of images by the PSNI in relation to the Ardoyne riots in 2010 a number of punishment attacks and exiling of young people took place in the St. James area of West Belfast. While not suggesting that these events were connected the timing served to underscore the seriousness of the ongoing threat posed to children and young people. Figures published by OFMDFM in January 2011 showed that casualties as a result of paramilitary-style attacks have more than doubled - in 2009 there were 122 casualties of paramilitary style shootings and assaults compared to 56 the previous year.

<http://www.ofmdfmi.gov.uk/index/equality/equalityresearch/research-publications/publication-az.htm#anc-g>

⁹⁵ Op cited at note 40 paragraphs 36 and 37

⁹⁶ Ibid paragraph 37

⁹⁷ Include Youth Young Voices consultation with young people

'You might get people coming forward but people will look at the photos and go 'there's me, I'm famous' and they'll get stuck up all over Face book and YouTube.'

Include Youth raised its concerns regarding this practice with the PSNI and the Northern Ireland Policing Board and, in particular, within the context of the Thematic Inquiry into Children and Young People undertaken by the Policing Board in 2010.

In considering the protections afforded to children and young people who are suspects under Articles 6 and Article 8 of the European Convention on Human Rights (ECHR) the Policing Board's Thematic Review noted:

"If the suspect is a child, the level of protection afforded is greater still. The privacy of a child or young person should be very carefully protected and very great weight must be given to the welfare of the child or young person. Dispensing with the young person's prime facie right to privacy (for example, for the purposes of more easily identifying suspects) by the release of images of children wanted for questioning is a decision which is difficult to justify save in exceptional cases where the safety of the general public is at stake".⁹⁸

The Thematic Review also drew attention to a central tenet within the youth justice system that of the protection of the identity of children and young people involved in criminal proceedings.⁹⁹ To date the PSNI has applied this principle in taking decisions not to publish details of ASBOs issued against under 18s.

Recommendation

- As a matter of urgency the PSNI should respond to the Policing Board's Thematic Inquiry into Children and Young People Recommendation 13 by stating its intent to comply with, setting out a short time frame within which the policy will be amended, and detailing how the amended policy will be communicated to all relevant PSNI officers.

⁹⁸ Op cited at note 12, p52

⁹⁹ Ibid p53

Use of stop and search powers

In a survey of young people's contact with the PSNI conducted in 2009, the second most common form of contact was being stopped and searched (29%)¹⁰⁰. An earlier survey conducted in 2003 with 1,163 young people found that the most frequent form of contact with the PSNI was being stopped and questioned (22%).¹⁰¹ Figures for young people surveyed in Derry in 2005 were higher, with 32% of young people reporting that they had been stopped and searched by the PSNI.¹⁰² These figures indicate that the powers to stop and search are used frequently against children and young people.

Information obtained by the *Belfast Telegraph* under a Freedom of Information request confirmed this assessment and revealed the full extent of the use of stop and search against children and young people. Figures supplied by the PSNI indicated that 2,299 under 16s were stopped and searched by the PSNI during 2008/09 – an average of six per day, more than double the previous year's figures. The figures included 27 who were aged nine and under, with the youngest three years of age.¹⁰³

While it was not apparent from the published information as to the statutory powers used to stop and search children and young people in Northern Ireland,¹⁰⁴ figures from the Metropolitan Police Authority indicate that Section 44 of the Terrorism Act 2000, prior to its use being found to be unlawful under the ECHR, was used consistently to stop and search children, including those below the minimum age of criminal responsibility. In 2008 2,331 children aged 15 or under were stopped by Metropolitan police officers under the Terrorism Act 2000 powers, including 58 children under 10 years of age. At the time Lord Carlisle, the independent reviewer of terrorism legislation, stated the figures indicated that "Section 44

¹⁰⁰ Nelson, E., et al, 2010, *Beyond the Margins. Building Trust in Policing with Young People*, Achieve Enterprises and Public Achievement, p18.

¹⁰¹ Hamilton, J. et al (2003) *Policing, Accountability and Young People*: Institute for Conflict Research

¹⁰² Roche, R. (2005) *Something to Say- a condensed TRIPROJECT report on the views of young school leavers in the Derry City Council district areas*: Blackstaff Press, Belfast.

¹⁰³ <http://www.belfasttelegraph.co.uk/news/local-national/police-search-threeyearold-child-14517575.html> accessed on 14 February 2011

¹⁰⁴ The ability of the Belfast Telegraph to obtain figures from the PSNI under the Freedom of Information Act of the numbers of under 16s stopped and searched would appear to contradict the assertion in the Policing Board's Thematic Review on Children and Young People that "it is not possible to quantify the full extent to which section 44 TACT, or any other stop, search and question power, has been used against children and young people" as the PSNI's quarterly statistical reports to the Board do not record the age of the person stopped, searched and/or questioned. Thematic Review Children and Young People pages 92-93

stops may have been used as an instrument of general policing rather than for the special purpose for which they were designed".¹⁰⁵.

There is no doubt that the experience of being stopped and searched for children and young people, which is at best distressing and at worst frightening, is likely to have a significant impact on their individual perceptions of the PSNI and relations between the PSNI and young people within communities in general.

Young people state that once they have any contact with the PSNI or the youth justice system it increases the probability of them being stopped and searched.

"I got stopped and searched 3 times in about 10 minutes – no joke. I even had the piece of paper saying that I'd been stopped and searched already, but when I showed it to them they just said I was going to be searched again. It's because I'm a 'known criminal'.

They were particularly critical of what they considered a lack of justification for stop and search: *"They stop and search you and say its 'article blah blah blah under the blah blah blah terrorist act."*

One young person suggested that young people should only be searched in the presence of an appropriate adult, noting that *"a cop isn't an appropriate adult"*.

The Northern Ireland Policing Board's Thematic Review of Children and Young People notes the increase in the use of Section 44 of the Terrorism Act 2000 and in the use of section 21 of the Justice and Security Act 2007 power to stop and question a person.¹⁰⁶ However as referred to earlier, the Thematic Review states that "it is not possible to quantify the full extent to which section 44 TACT, or any other stop, search and question power, has been used against children and young people",¹⁰⁷ as the PSNI quarterly statistical reports to the Policing Board do not record the age of the person stopped, searched and/or questioned. The reason given for this is that the PSNI cannot require a person to disclose their date of birth.

While the moves by the UK government to amend the use of Section 44 of the Terrorism Act 2000 are overdue there remains cause for concern in relation to the introduction of what the Secretary of State, Owen Paterson, describes as a 'more tightly circumscribed power' in relation

¹⁰⁵ <http://www.cypnow.co.uk/news/988448/ChildRIGHT-Childrens-rights---Use-stop-search-powers-children/>
accessed 14 February 2011

¹⁰⁶ Op cited at note 12 p 91

¹⁰⁷ Ibid pages 92-93

to its use, and similarly, in relation to similar amendments to the power of stop and search under the Justice and Security (Northern Ireland) Act 2007.¹⁰⁸

This raises concerns that faced with not having the option of using Section 44 of the Terrorism Act 2000 and having been forced to rely on Section 43 of the Act (which does require police to demonstrate reasonable suspicion), Section 43 could become routinely misused.

Concerns regarding the use of new, amended powers against children remain consistent with those highlighted by the Policing Board's Thematic Review – without a breakdown in the data on stop and search which is supplied to the Policing Board it is not possible to fulfil their duty to monitor and hold the PSNI to account.

Recommendations

- All powers to stop and search children and young people should be exercised in compliance with human rights and in particular with key provisions of the UN Convention on the Rights of the Child, including Article 2 (non-discrimination) and Article 3 (best interests).
- The use of stop and search powers should also comply with the PSNI's obligations under Section 75 of the Northern Ireland Act 1998 in relation to the age ground.
- Consistent with Recommendation 20 in the Policing Board's Thematic Review, quarterly data supplied to the Policing Board on the use of stop and search powers should include data on the approximate age of the person against whom the powers have been used, in order to enable the Policing Board (and others) to monitor statistics and to address any concerns regarding particular patterns that may emerge.

Police Bail

The current situation in relation to the granting of bail to children and young people by the PSNI has been identified as being anomalous within the overall youth justice system. As highlighted in the Northern Ireland Law Commission's Consultation Paper on Bail in Criminal Proceedings¹⁰⁹ two distinct regimes exist side by side in this jurisdiction and different rules apply to granting bail to children and young people by the police post charge and by the courts. Under the Criminal Justice (Children) (Northern Ireland) Order 1998 there is a strong presumption in

¹⁰⁸ <http://www.nio.gov.uk/written-ministerial-statement-stop-and-search-powers-under-the-justice-and-security-northern-ireland-act-2007/media-detail.htm?newsID=17506> accessed 14 February 2011

¹⁰⁹ Northern Ireland Law Commission *Consultation Paper on Bail in Criminal Proceedings* NILC7 (2010) page 59

favour of bail for young persons, with remand available only for certain offences and in certain circumstance. The main emphasis is on the protection of the public.

By contrast the PSNI possess broad powers to detain children and young people charged with offences under Police and Criminal Evidence (PACE). Children and young people can be placed in custody under the provisions of the Police and Criminal Evidence (Northern Ireland) Order (PACE). These admissions are generally for 1 or 2 days, ensuring that children are held securely pending a court appearance.

Research demonstrates that use of remands impact disproportionately on looked after children, particularly those in residential care. While children and young people in residential care may behave in challenging ways, it is clear that custody is not being used only as a last resort - children who are 'management problems' (rather than 'offenders') are regularly moved from residential care, via PACE, to the Juvenile Justice Centre (JJC). A full, announced inspection of the Juvenile Justice Centre undertaken in November 2007 raised concerns about the profile of the children detained there, and the inappropriate use of custody for children from care.

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

48% of all admissions to the Juvenile Justice Centre between January 2006 and October 2007 were under PACE (NI).¹¹⁰ A large proportion of admissions (42%) are subsequently released by the courts.¹¹¹ The broad powers possessed by the PSNI under PACE (NI), coupled with a lack of suitable alternative accommodation for young people, may be contributing to this problem. Young people also describe difficulties in the way in which police officers monitor compliance with bail conditions:

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

Recommendations

- The test for the remand of children and young people charged with offences but not convicted should be amended to a single test which would be applied by the police and the courts.

¹¹⁰ Criminal Justice Inspectorate Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, CJINI, p 4

¹¹¹ *Ibid* p 4

- The test for bail should conform to international child and youth justice principles within the framework of children’s rights standards.
- A reformed test for the remand of children and young people must be established to suit the needs of children and young people. Flexibility should be built in to ensure that the background and individual circumstances of the child are taken into account.
- The lack of a bail address should never be used as a basis for remanding a young person.

Young people’s experiences and perceptions of the PSNI

Since the publication of the Patten Report in 1999, research has demonstrated that young people’s perceptions and their experiences of the PSNI have remained negative.¹¹² This is despite the Patten recommendations which were designed to transform the nature of policing in Northern Ireland and build a police service based on principles of human rights, consensual policing, public accountability and transparency rather than one dominated by security and militarisation.¹¹³ It is also despite reforms to policing and youth justice introduced as a result of the Review of the Criminal Justice System in Northern Ireland in 2000 and the subsequent Justice (Northern Ireland) Act 2002. The concomitant introduction of the Youth Diversion Scheme provided a restorative framework to underpin the PSNI’s engagement with children and young people under 18 years of age who come to their attention for risk taking behaviour, anti-social behaviour, offending behaviour and in instances where the young people are at risk in terms of their safety or well-being.

A review of existing literature concluded that the majority of young people had negative experiences and perceptions of the police. The research findings established that:

Young people frequently maintained that they were targeted by the PSNI and were too readily labelled as criminals for what at times was no more than copying adult behaviour or a response to sectarian aggression or aggression by the PSNI themselves.¹¹⁴

Young people believed that the PSNI were uninterested in the types of issues confronting them.¹¹⁵

¹¹² Byrne, J. and Jarman, N. (2010) *Ten Years after Patten Young People and Policing in Northern Ireland*, Institute for Conflict Research and University of Ulster

¹¹³ With the benefit of hindsight, the failure to address relationships between the police and children and young people in the Patten Commission’s consultation or in subsequent debates flowing from its publication was a serious error on the part of those setting the Terms of Reference for that Commission

¹¹⁴ Hansson, U. (2005) *Troubled Youth? Young People, Violence and Disorder in Northern Ireland*. Belfast: Institute for Conflict Research

A perception existed among some more marginalised young people that the PSNI focused particularly on young men.¹¹⁶

PSNI officers reported spending a disproportionate amount of time responding to call-outs to deal with incidents, often of a low level nature, involving young people.¹¹⁷

Young people who were distrustful of the policing structures were less likely to report crime.¹¹⁸

Low level interactions between young people and the PSNI, often perceived as harassment, readily generated antagonism among young people and provided both a catalyst and a justification for acts of disorder and anti-social behaviour.¹¹⁹

The community background of young people did not prove to be a significant factor in their experiences and perceptions of the PSNI.¹²⁰

Recent research reaffirms some of the above findings, especially in relation to the hostile perceptions that many young people hold towards the PSNI. It also found that the percentage of young people who had complaints about how they were treated by the PSNI was lower than the figure which emerged from a previous study in 2003.¹²¹

These findings have been echoed by the young people involved with Include Youth.

“They don’t seem to care what they say or do ‘cause they’ve got the badge”

“They try and speak to you in front of your mates, your mates try to wind you up, say you are a tout, they do it on badness”

“More young people have turned against the police now rather than turning against the other religion

“They don’t uphold the law they think they are the law”

¹¹⁵ Byrne et al (2005) *Young people’s attitudes and experiences of policing, violence and community safety in North Belfast*. Belfast: Northern Ireland Policing Board

¹¹⁶ Lloyd, T. (2009) *Stuck in the Middle- Some young men’s attitudes and experiences of Violence, Conflict and Safety*. University of Ulster, Centre for Young Men’s Studies. Belfast: Youth Action Northern Ireland

¹¹⁷ Byrne, J. and Monaghan, L. (2008) *Policing Loyalist and Republican Communities-Understanding key issues for local communities and the PSNI*, Belfast: Institute for Conflict Research

¹¹⁸ Op cited at note 7

¹¹⁹ Ops cited at notes 115 and 116

¹²⁰ Op cited at note 113

¹²¹ Hamilton et al (2003) *Policing, Accountability, and Young People Belfast*: Institute for Conflict Research

“You should feel safe when you see the police but you automatically feel anxious”

When young people were asked why they thought the PSNI behaved in the manner they described one young person replied, “to intimidate you”.

The impact of negative stereotyping on children and young people’s lives was viewed so seriously by the Policing Board’s Thematic Review of Children and Young People that the final report included the following pledge: “ that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping”.¹²² The Thematic Review also acknowledged that the PSNI alone cannot redress society’s negative stereotyping. However, the impact of discriminatory and differential policing of children and young people has, without a doubt, a knock on effect on children and young people’s perception of the PSNI.

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Recommendations

- The PSNI should make a firm commitment to the implementation of all of the recommendations contained in the Policing Board’s Thematic Review. It should be operationalised via an implementation plan which contains targets, time frame and indicators.
- The PSNI should address all outstanding, relevant recommendations from the UN Committee on the Rights of the Child, including the need for translation of child rights compliant policies into practice.

Anti-Social Behaviour Orders (ASBOs)

International Standards

ASBOs undermine a number of key provisions in the UN Convention on the Rights of the Child, including non-discrimination, best interests, participation, right to a fair trial, right to privacy, freedom of movement and peaceful assembly and right to play and leisure. In the context of Northern Ireland as a society emerging from conflict Article 6 on the right to life and Article 19 on protection from all forms of violence also are potentially engaged.

ASBOs also breach domestic human rights legislation, namely Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 10 (right to freedom of expression) and Article 11 (right to freedom of assembly) of the European Convention on Human Rights as

¹²² Op cited at note 12 p3

¹²³ Ibid recommendation 19 page 86

incorporated by the Human Rights Act 1998. They fail to have regard to non-discrimination provision, Article 14 of the European Convention on Human Rights.

Include Youth's long-standing opposition to the use of ASBOs against under 18s is well documented and is based on the following grounds:

- The definition of 'anti-social behaviour' is subjective
- As civil orders there is a lower burden of proof – hearsay and professional evidence is admissible in ASBO hearings
- Civil and criminal law are blurred
- Reporting restrictions can be lifted, raising child protection concerns and setting ASBO proceedings apart from other court processes involving under 18s
- ASBOs can be used in conjunction with a prison sentence, effectively resulting in a form of 'release under licence'

Despite their extensive use against children and young people in England and Wales, the use of ASBOs against children and young people in Northern Ireland has been limited, a result, of the opposition by NGOs and others to their introduction and subsequent close monitoring of their use. While concerns were expressed that a pattern of increasing use was emerging,¹²⁴ recent figures from the Department of Justice indicate that the proportion of ASBOs issued to under 18s has decreased. Of 39 ASBOs in place in Northern Ireland on 1 April 2010, 11 (28%) were issued against children and young people under 18.¹²⁵ Given the lack of consistency in issuing of ASBOs across different district councils in Northern Ireland it is not possible to predict that the current pattern will remain consistent.

Research and consultations with young people and those who work with them indicates that the threat of ASBOs is frequently used by the PSNI, via warning letters.

"In one community, all groups interviewed stated that the police regularly threatened young people with [ASBOs]. While no ASBOs had been issued, some children and young people received warning letters for behaviour they did not consider to be anti-social. ASBOs, they argued, were used to threaten young people, based on the assumption that 'hanging about' was a precursor to anti-social behaviour ...in the experience of these young people, ASBOs had

¹²⁴ Criminal Justice Inspectorate Northern Ireland (2008) *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*. Appendix 3

¹²⁵ Minister for Justice David Ford MLA 23 April 2010 (AQW 6210/10)

become another tool to regulate and control their behaviour...behaviour that involved merely standing or sitting in groups within their own neighbourhoods".¹²⁶

Thus it is the 'threat' of an ASBO that is significantly imposing control and regulation on young people's behaviour.

The use of ASBOs against children and young people has been heavily criticised by a range of international and domestic human rights bodies. The United Nations Human Rights Committee in its 2008 Concluding Observations on the UK's implementation of the International Covenant on Civil and Political Rights, and the UN Committee on the Rights of the Child in its 2008 Concluding Observations, called on the government to reconsider its position. The latter recommended that "the State party conduct an independent review of ASBOs with a view to abolishing their application to children".¹²⁷

The Northern Ireland Policing Board's Thematic Review on Children and Young People devoted much attention to the issue of ASBOs and their use against children and young people, and concluded that the PSNI should "consider limiting applications for ASBOs to people over the age of 18 years old and should instead consider the alternative disposals available in respect of children".¹²⁸

Research has also concluded that ASBOs are ineffective, and serve often to merely displace problematic behaviour. The Criminal Justice Inspectorate Northern Ireland (CJINI) concluded from its inspection of the operation and effectiveness of ASBOs that "anecdotal evidence suggests that alternatives are as effective, if not more effective, than ASBOs."¹²⁹

Proposals currently under review in England and Wales to replace ASBOs with new measures have been criticised by children and young people's organisations as simply '*a rebranding exercise*'.¹³⁰ The proposed replacement measures include Criminal Behaviour Orders and Crime Prevention Injunctions. They have been labelled, the 'Community Trigger' whereby police action can be triggered by five individuals from different households.

Such new proposals also undermine due process and the right to a fair trial and leading to further blurring of civil and criminal law. It is important to end the demonisation and

¹²⁶ Op cited at note 7, p 77.

¹²⁷ Op cited at note 40 paragraph 20

¹²⁸ Op cited at note 12, p 69

¹²⁹ Op cited at note 125

¹³⁰ <http://www.guardian.co.uk/society/2011/feb/07/charities-condemn-asbo-rebrand> accessed on 12 February 2011

criminalisation of children and young people and to address the reasons for anti-social behaviour. It is regrettable that the Minister for Justice, David Ford, has indicated that he is monitoring developments in the UK with a view to developing similar proposals in Northern Ireland.

There was a missed opportunity in the recent drafting of the Justice Bill (Northern Ireland) to amend the legislation so as to preclude the use of ASBOs against children. ASBOs have no place in a youth justice system based on the principles of children's rights and, in particular, the child's best interests, prevention, minimal intervention, diversion, reintegration and rehabilitation.

Recommendation

- The Anti-Social Behaviour (Northern Ireland) Order 2004 should be amended to prohibit the use of ASBOs against under 18s.

Training

United Nations Convention on the Rights of the Child (UNCRC) Articles 4 and 42 stress that all professionals working with children and young people should be aware of, and receive training about, the UNCRC and children's rights.

The UN Committee on the Rights of the Child, places a heavy emphasis on the need for training in all aspects of the UNCRC and its application. It reinforces this message during its examination of states. In 2008 it recommended "the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health professionals, social workers and personnel of child-care institutions".¹³¹

International standards also establish the need for dedicated training for law enforcement personnel in how to respond to the special needs of young people.¹³²

¹³¹ Op cited at note 40 paragraph 21

¹³² Op cited at note 83, Guideline 58

Recent developments regarding human rights and children's rights training within the PSNI is a positive development. It includes the planned screening exercise of all training to ensure it complies with the UNCRC and that its principles are understood in terms of operational practice and the audit currently being undertaken by the PSNI Human Rights Training Advisor in conjunction with the PSNI's Legal Advisor, of its use of force policy and training in relation to children and young people. However, the lack of core children's rights training is still a major omission from PSNI training, both on the Student Officer Training Programme for new recruits and for officers who have assumed their duties.

Recommendation

- The PSNI should develop and initiate a module on children's rights training as a core component of the PSNI's Student Officer Training Programme. Other PSNI training courses including Probationer and Specialist Training courses should also incorporate a relevant focus on both the principles and the practical application of the UNCRC and other relevant rights based instruments and standards in operational policing.

Speedy Justice

The introduction of Speedy Justice by the PSNI would appear to have taken place below the radar of human rights oversight and monitoring bodies in Northern Ireland. Include Youth only became aware of its operation recently, not having been consulted by the PSNI. Based on documentation, presentations and a series of meetings with the PSNI to discuss Speedy Justice, Include Youth has serious concerns regarding the application of Discretionary Disposals by the PSNI to children and young people.

The PSNI has stated that its introduction of Speedy Justice is in response to Recommendation 21 of the 'Review of Policing' commissioned by the then British Home Secretary which reviewed policing in England and Wales. This deals with the streamlining of recording and discretion, with appropriate accountability and supervision.¹³³

According to the PSNI, the aim of 'discretionary justice' is to "encourage officers to use their professional judgement to resolve minor crime to the satisfaction of victims and the community whilst maintaining accountability".¹³⁴

¹³³Flanagan, R (2008) *Final Report of the Independent Review of Policing Commissioned by the Home Secretary*, Home Office

¹³⁴ Police Service Northern Ireland, undated, *Response to a Freedom of Information request F-2010-01784*: PSNI

Speedy Justice currently encompasses three initiatives: Discretionary Disposal; a No Prosecution streamlined file; and a Non Court Diversion process (i.e. Telephone cautioning).¹³⁵

For young people, Discretionary Disposals will be considered instead of a Warning and Advice or caution which currently appears on a record. While a discretionary disposal will remain on PSNI files to inform decision-making regarding future offending it will not constitute a formal criminal record for the purposes of employment checks. To date it is understood that 25% of Speedy Justice disposals involved children and young people.¹³⁶

A victim led approach

The PSNI's policy intent for 'Speedy Justice' is to give clear priority to the victim's views as to whether discretionary powers should be used in relation to individual incidents. In the area of Larne, where Speedy Justice has been operational since July 2010, the local District Policing Partnership's 6 month report included the following in relation to Speedy Justice:

"this new way of working is designed to bring a common sense approach to dealing with minor offences and involving victims in helping to set the outcome they want to see from a case".¹³⁷

Nowhere else in the criminal justice system is a victim given such a direct involvement and control regarding disposal.

Include Youth contends that by providing victims with what must certainly be perceived as a 'veto', Speedy Justice runs the risk of being led by the subjective views and feelings of individual victims, leading to inconsistent application of the law in contravention of international and domestic human rights standards.

Proportionate Criminal Justice Outcomes

Among the outcomes associated with the use of Speedy Justice are financial reparation, an apology, 'anti-social behaviour counselling'.¹³⁸ Include Youth is challenged to understand how such outcomes can be proportionate to the level of offence involved when others in this category (Informed Warnings and Restorative Cautions) have no such requirements.

¹³⁵ Police Service Northern Ireland, undated, *Service Procedure (SPv1.0/10) Speedy Justice*: PSNI. p 6

¹³⁶ Op cited at note 14

¹³⁷ Police Service Northern Ireland, 2010, District Policing Partnership Larne Area H 6 Month Report: PSNI, p 3

¹³⁸ Op cited at note 14

Given the extensive evidence demonstrating that the less the formal criminal justice system intervenes in the lives of children and young people, particularly during first or early offending, the more likely no further re-offending will occur.¹³⁹

As with Fixed Penalty Notices it is questionable whether PSNI officers possess sufficient skills and training to assess either the ability of parents to pay for reparation on behalf of the child or of the child's ability to comply with other requirements.

Separation of the functions of investigation, prosecution and adjudication

Concerns exist concerning the potential blurring of responsibilities for and functions of investigation, prosecution and adjudication in relation to the PSNI's use of Discretionary Disposals. Include Youth expressed similar concern regarding proposals for the introduction of Fixed Penalty Notices to vulnerable young adults as part of the Justice Bill (Northern Ireland) 2010.¹⁴⁰

The question of whether prosecutorial responsibility for what were deemed to be minor cases should lie with the PSNI was addressed by the Criminal Justice Review arising from the Good Friday/Belfast Agreement 1998. The Review concluded that in order to build confidence in the criminal justice system in Northern Ireland it was important that these functions were clearly separated.

Concerns regarding the potential conflation of those separate functions, in the context of proposals to allow police officers to issue Fixed Penalty Notices have been expressed in recent years by among others, the Northern Ireland Human Rights Commission (NIHRC) and the Committee on the Administration of Justice (CAJ). The NIHRC recommended that in the event of powers for the PSNI to issue Fixed Penalty Notices being introduced through the Justice Bill (Northern Ireland) 2010, a robust mechanism should be put in place to ensure effective police training and oversight of the use of the proposed new power.

Process involved in the introduction of Speedy Justice

While assurances have been given that this policy is Human Rights, UNCRC and equality compliant no information is provided as to the process undertaken and advice, if any, received by which the PSNI assessed such compliance. In particular, no formal consultation process has been undertaken in accordance with section 75 of the Northern Ireland Act 1998.

¹³⁹ Op cited at note 18

¹⁴⁰ Committee for Justice (2010) Official Report of Proceedings (Hansard) on Justice Bill: Parts 5 and 6, 9 December 2010

Aside from other concerns outlined earlier, Speedy Justice cannot be at the expense of human rights compliant justice. There is a need for much greater information and transparency regarding the process for the introduction of Speedy Justice than has been provided to date.

Recommendation

- Given the serious concerns outlined above regarding the application of Speedy Justice to under 18s, coupled with the range of disposals already in existence which are available to deal with low level offending amongst young people, the PSNI should no longer apply speedy justice to under 18s.



9. Early intervention and family support

International standards

Given the principles underpinning the UN Convention on the Rights of the Child (non-discrimination, best interests, survival and development to the maximum of a child's potential, participation) alongside key provisions regarding evolving capacity, the role of the family and education, the responsibility of the State to prevent children and young people coming into conflict with the law is profound.

The UN Committee on the Rights of the Child has observed that a juvenile justice policy without a set of measures aimed at preventing what it terms juvenile delinquency suffers from serious shortcomings. It has recommended that State parties should fully integrate into their juvenile justice policies the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).¹⁴¹ These Guidelines represent a comprehensive and proactive approach to prevention and detail social and economic strategies that involve all arenas of a child's life including family, school, community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not as being about addressing negative situations but as a means of positively promoting the child's welfare and well-being. It requires a more proactive approach that should involve "efforts by the entire society to ensure the harmonious development of adolescents".¹⁴²

The Council of Europe also highlights what it identifies as "the immense importance of early detection and prevention"¹⁴³ noting that "an effective and humane policy would put strong emphasis on prevention".¹⁴⁴ Among the core components of an effective preventive strategy identified by the Council of Europe are: "support to families at risk, decisive reaction on signs of domestic violence, social workers with outreach capacity, neighbourhood networks and a school which not only teaches but also cares for every individual child".¹⁴⁵ The Council of Europe also stresses the centrality of the child themselves in any preventative approaches

¹⁴¹ Op cited at note 83

¹⁴² Ibid paragraph 2

¹⁴³ http://www.coe.int/t/commissioner/Viewpoints/070108_en.asp accessed 15 March 2011

¹⁴⁴ http://www.coe.int/t/commissioner/viewpoints/090202_EN.asp

¹⁴⁵ http://www.coe.int/t/commissioner/Viewpoints/070108_en.asp

“They should also be child focused, undertaken in partnership with the child, rather than be an attempt to control the child, and be focused on ensuring the child’s full and harmonious holistic development”.¹⁴⁶

Current situation

Children currently categorised as at ‘risk of offending’ often face a host of inter-related problems in their lives – for example in their family, at school and within their community. What is problematic is that currently the youth justice system has a role, and at times a significant and lead role, in providing responses to these children and their families. In part this has been because resources were available within the criminal justice system, and there exists an understanding among professionals within the youth justice system of the need to keep children out of the system. In addition, the Northern Ireland system has largely followed the previous UK government’s prevention agenda, which has resulted in net-widening. Early intervention services should be supported but not directed by the justice system in Northern Ireland – but rather through a partnership which is led by Department of Health, Social Services and Public Safety (DHSSPS) through Children’s Services, alongside Department of Education (DE), Department for Employment and Learning (DEL), Department for Social Development (DSD), and other relevant departments and agencies.

Priorities for action based on early intervention, prevention and the provision of services necessary to support children and young people in need/ at risk are essential to reduce the numbers of children and young people coming into contact with the criminal justice system. It is also vital that early intervention must not be equated with early years. Children and young people may require preventative and family support services at all stages of their lives for example at times of transition or following a traumatic event.

The evidence on why prevention works

There are clear grounds for investing in early intervention and family support. A cursory glance at the character and background profile of the young people currently held in the Young Offenders Centre and the Juvenile Justice Centre would show histories of complex personal and social problems, professional neglect and persistent failings within the system.

It is Include Youth’s experience, supported by international research, which consistently demonstrates that young people’s offending, regularly reflects unmet complex needs. These

¹⁴⁶ Council of Europe (2009) *Children and Juvenile Justice: Proposals for Improvement*. Issue Paper

combine to define and restrict their daily lives, leaving them with a sense of rejection and powerlessness. Many experience poor educational attainment (due to a disability or special educational needs, truanting or exclusion from school), misuse drugs or alcohol, engage in unsafe sexual behaviour, 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.

Despite evidence demonstrating the impact of these factors on children's lives, their behaviour is denounced as 'anti-social'. Mental ill health, regularly revealed through depression, self harm and suicide, is often undiagnosed or inappropriately treated.

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. This approach, targeted at promoting the well-being of all children and characterised by universal services, holistic approaches and 'decriminalising' responses'¹⁴⁷ comprise the most effective and least damaging forms of intervention and will subsequently minimise the necessity for intervention by the criminal justice system.

Recommendations

- Adequate, appropriate and well-resourced early intervention should be provided to identify, support and address the needs of children and their families.
- Policy and practices should avoid stigmatising or criminalising children and young people for welfare based concerns. Family support services should be provided through a social care framework and delivered by voluntary sector providers in partnership with local communities, families, children and young people. These services should not be delivered by criminal justice agencies but by a range of relevant government bodies led by Department of Health, Social Services and Public Safety (DHSSPS).

¹⁴⁷ Presentation by Professor Barry Goldson to the All Party Assembly Group on Children and Young People, 1st February 2011

10. Diversion

International standards

The United Nations Convention on the Rights of the Child (UNCRC) prioritises alternatives to judicial proceedings for under 18s ‘wherever appropriate and desirable’, while including a caveat that human rights and legal safeguards be fully respected.¹⁴⁸

The United Nations General Comment No 10 on Juvenile Justice notes that in light of this provision, and given the fact that the majority of children and young people commit minor offences “a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases”.¹⁴⁹

This UN General Comment outlines a series of safeguards which should apply to the use of such diversionary measures. These include the existence of compelling evidence regarding the child’s involvement in the alleged offence, free and voluntary consent given by the young person, clear identification in law as to which cases diversion can be used for, regulation of the discretionary powers of police and others in this regard, access to legal advice by the young person and no criminal record resulting from the use of diversionary measures.¹⁵⁰

Other UN guidance including the Beijing Rules and the Tokyo Rules also emphasize the benefits of using diversionary measures with young people and recommend that consideration should be given to such measures where possible. The Beijing Rules draw attention to the importance of ‘informed consent’ by the young person¹⁵¹ and opportunities to challenge this consent, noting that it may sometimes “be given out of sheer desperation on the part of the juvenile”.¹⁵²

The UN Committee on the Rights of the Child, in its examination of the UK government in 2002, welcomed initiatives to introduce restorative justice and other community based disposals for juvenile offenders.¹⁵³

¹⁴⁸ UN Convention on the Rights of the Child paragraph 40.3 (b)

¹⁴⁹ Op cited at note 6 paragraphs 24 -27.

¹⁵⁰ Ibid paragraph 27

¹⁵¹ Op cited at note 33 Commentary on Rule 11. 3

¹⁵² Ibid

¹⁵³ Op cited at note 84 paragraph 59

Diversion from formal criminal justice system

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.

Diversion should be the cornerstone of an effective youth justice system. International standards are supported by a body of international research that outcomes for children who have begun to get into trouble are significantly improved when they are diverted from the formal criminal justice system. It is essential to address the structural inequalities which pervade the lives of marginalised young people, families and communities, and to provide necessary support services in a non-stigmatising way enabling young people to reach their full potential and their families to be able to cope with the challenges facing them.

A longitudinal study which tracked 4,000 children found that targeted early intervention strategies actually widened the net in terms of criminalising young people. The systems appeared to damage young people and inhibit their capacity to change.¹⁵⁴

As McAra and McVie state, "The key to reducing youth offending lies in maximum diversion and minimum intervention. Accepting that, in some cases, doing less is better than doing more requires both courage and vision on the part of policy makers. A realisation of this vision in turn requires acceptance that youth justice agencies cannot, by themselves, make the public feel safer nor can they mend broken families and remake shattered communities. To the extent that systems appear to damage young people and inhibit their capacity to change, then they do not, and never will, deliver justice."¹⁵⁵

Current situation

Reforms introduced as a result of the 2000 Review of the Criminal Justice System in Northern Ireland and the subsequent Justice (Northern Ireland) Act 2002, demonstrate a commitment to alternatives to prosecution for children and young people. The Review highlighted the importance of diversion and stressed the importance of restorative approaches. What remains under-developed is a clear emphasis on diversion *away from* the formal criminal justice system. From experience, Include Youth considers that some of the current processes within the formal

¹⁵⁴ Op cited at note 18

¹⁵⁵ McAra, L. And McVie, S. (2007) 'Youth Justice? The Impact of Agency Contact on Desistance from Offending', *European Journal of Criminology* 4(3):315-45

system are not diversionary as envisaged by the Criminal Justice Review, and raise issues regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance.

Currently, children involved in low-level, minor and non-persistent offending behaviour are dealt with by the formal system through a series of incremental disposals. These are delivered by the PSNI through informal warnings and restorative cautions and the Youth Justice Agency through diversionary youth conferences – with decisions regarding these disposals taken by the Public Prosecution Service.¹⁵⁶

While these disposals do not constitute a formal criminal conviction, they require an admission of guilt, and remain on the child's record for between 12 months and 2½ years.¹⁵⁷ Further, information can be kept on record throughout the period specified in legislation 'if there is a specific reason for doing so'.

Between April 2008 and March 2009 the police carried out 1,213 Informed Warnings to juveniles; 1,059 Restorative Cautions to juveniles.¹⁵⁸ During the same period 758 diversionary youth conference orders/plans were approved.¹⁵⁹ Since the introduction of Youth Conferencing in 2003, approximately 9,000 conferences have been issued.¹⁶⁰ The proportion of cases which have been disposed of through court ordered and diversionary youth conferences has increased from 15% of all disposals in 2005 to 50% in 2008¹⁶¹ The primary aim of the scheme is to reduce levels of offending and the meet the needs of the victims of crime.

Currently 60% of all youth conferences administered by the Youth Justice Agency are diversionary in nature.¹⁶² Since the introduction of Youth Conferencing, one in five young people referred have been referred for more than one diversionary youth conference.¹⁶³

¹⁵⁶ See the *Justice Act (Northern Ireland) 2002* and Public Prosecution Service (2008) *Guidelines for Diversion*, Belfast: PPS. The Youth Conferencing Service was first piloted in 2003 and rolled out across Northern Ireland in 2006, including court ordered and diversionary youth conferences

¹⁵⁷ Op cited at note 19 p62

¹⁵⁸ Department of Justice Statistics and Research Branch (2010) *Digest of Information on the Northern Ireland Criminal Justice System*, Volume 1: p40

¹⁵⁹ Youth Justice Agency FoI response No. 2011/04 to written request for information from Include Youth, dated 24/3/2011

¹⁶⁰ Chapman, A. (2011) 'Youth Conferencing' presented at *Regulation and Criminalisation of Children and Young People Seminar* Childhood, Transition and Social Justice Initiative, Queen's University Belfast, 25th January 2011

¹⁶¹ Youth Justice Agency (2009) *Annual Report and Accounts 2008-2009*, HC 703 London: The Stationery Office

¹⁶² Op cited at note 161

¹⁶³ Op cited at note 160

Youth conferencing in Northern Ireland

Youth Conferencing has received extensive publicity since its introduction and is regarded by many to be a model of good practice. This is echoed in the words of the Department of Justice:

“Northern Ireland is now held up as having a proportionate, progressive and restorative approach to youth justice, which is recognised both nationally and internationally.”¹⁶⁴

In the recently produced Independent Commission on Youth Crime and Anti-Social Behaviour restorative conferencing in Northern Ireland is proclaimed as a model of excellence.¹⁶⁵ Youth Conferencing espouses three overall advantages: it reduces offending; it is cost effective; it supports the victim.

While strong advocates for implementation of restorative practices, Include Youth raises several concerns regarding the current implementation of youth conferencing, based on feedback from children and practitioners who have been supported through the process. Evaluation of youth conferencing¹⁶⁶ has focused on the process and overall satisfaction of the process, rather than the long term outcomes and that their consequences for young people involved.

Details of a child’s record can be disclosed even following a diversionary conference. This has the potential to result in a detrimental and disproportionate long-term negative effect on the life chances of the child in accessing education, training and employment opportunities.¹⁶⁷

“It can be hard to get a job, but when you’ve got a record you don’t bother applying for jobs, ‘cos you know that you’re not going to get it.”

Concerns have been raised regarding informed consent and meaningful participation by young people and practitioners with whom they work, particularly concerning diversionary youth conferences. It is questionable whether many young people are in a position to give informed consent and have the capacity to participate, often agreeing to actions and conditions which they do not fully understand. A number of practitioners have also expressed the view that some

¹⁶⁴ Department of Justice (2010) Press release dated 15 July 2010 ‘Ford welcomes independent endorsement of NI youth conferencing system for young offenders’ : Department of Justice

¹⁶⁵ Independent Commission on Youth Crime and Anti-Social Behaviour (2010) *Time for a Fresh Start*, Police Foundation

¹⁶⁶ Campbell, C et al (2005) *Evaluation of the Northern Ireland Youth Conference Service*. Northern Ireland Research and Statistics Series, Report No 12. Northern Ireland Office

¹⁶⁷ Youth Conference Rules (Northern Ireland) 2003 paragraph 5

young people are not at the stage of being able to participate meaningfully in proceedings due to mental health issues and learning difficulties.

Many of the young people involved with Include Youth who have attended youth conferences report negative experiences.

“I knew I did wrong but it wasn’t good for me.”

“I thought it was silly, the whole thing.”

Include Youth has 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 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.

Recent international evidence suggests that conferencing can be a mechanism for net-widening and simply a bolt on to the criminal justice system.¹⁶⁸ Many children who experience the protracted process of a diversionary youth conference are subjected to an unnecessary, criminal justice response. They go through lengthy preparation undertaken by trained facilitators from the Youth Justice Agency followed by a conference involving numerous participants including their parents or carers, police, the victim and a supporter or their representative. This culminates in an action plan recommended for approval by the Public Prosecution Service (PPS). The action plan then has to be implemented by the young person and monitored by the Youth Conference Co-ordinator over a specified period of time.

This process is excessive and disproportionate in managing challenging behaviour. There is strong empirical evidence, referred to in Section 9 submission, to suggest a minimal intervention policy is most effective.¹⁶⁹ Children’s behaviour will be dealt with more effectively through a non criminalising route, through for example, education, youth work, health support, housing etc. What is needed is not a criminal justice response but a welfare-based approach which seeks to support identified needs.

This issue of net-widening and ‘soaking up’ children who ought not to be involved in the justice system also has significance for re-offending rates. Both the Prison Reform Trust and Criminal Justice Inspectorate Northern Ireland (CJINI) concluded that it was either difficult or impossible

¹⁶⁸ Cunneen, C., Professor and Hoyle, C. (2010) *Debating Restorative Justice*. Hart Publishers

¹⁶⁹ Op cited at note 18

to assess the impact of conferencing in terms of reducing levels of reoffending.¹⁷⁰ Latest available statistics reveal a re-offending rate of 28.3% among young people who received a diversionary conference.¹⁷¹ It is inappropriate to compare this figure with those of young people with high levels of offending. Those young people given pre-court disposals are generally at a lower risk of re-offending, than those given more severe sentences such as custody.¹⁷² In addition, prior to the introduction of diversionary youth conferences when all diversionary processes were dealt with through police, the re-offending rate was 20% for children who received police disposals of Advice and Warning and Cautions.¹⁷³

There is a clear argument for the reintroduction of a speedier, less intrusive, less bureaucratic process, with minimum contact with the formal criminal justice system, which signposts children in trouble to necessary welfare-based provision in the community. This provision should provide the option to use community-based restorative justice processes, which would engage with the victim, the young person, their family and community in a proportionate and holistic manner.

The young people consulted through Young Voices also questioned whether a youth conference was effective in preventing re-offending and challenged its long term impact. The prevalence of multiple conferences also suggests that the process is not affecting the desired outcome in terms of altering the young person's behaviour.

"It stopped me doing crime for a few days until you get a load of drink or blues in you then you just go out and do more. Until you get a conference again and then you feel bad again."

The Independent Commission on Youth Crime and Anti-social Behaviour states that the youth conferencing system in Northern Ireland "hinges on young offenders coming to terms with and repairing harm to victims and is not primarily geared to tackling offenders' underlying problems and needs."¹⁷⁴ This raises a concern regarding the best interests of the child and suggests there is insufficient emphasis within the process acknowledging and working on the young person's

¹⁷⁰ Jacobson, J. and Gibbs, P. (2009) *Out of Trouble Making Amends: Restorative youth justice in Northern Ireland*: Prison Reform Trust; Criminal Justice Inspectorate Northern Ireland (2008) *Inspection of the Youth Conference Service in Northern Ireland*: CJINI

¹⁷¹ Tate, S. and O'Loan, C. *Northern Ireland Youth Re-Offending: Results from the 2006 Cohort*. Northern Ireland Office Statistics and Research Branch. Research and Statistics Bulletin 4/2009

¹⁷² *ibid*

¹⁷³ Mathewson, T. et al, (1998) *Cautioning in Northern Ireland: A Profile of Adult and Juvenile Cautioning and Reoffending Rates*, Research and Statistics Branch, 4/98, Northern Ireland Office

¹⁷⁴ Independent Commission on Youth Crime and Anti Social Behaviour (2010) *Time for a New Hearing*, JUSTICE and Police Foundation, p 19

needs. A critical evaluation of the current model/process is necessary to assess how it meets the best interests of the young person.

Current Youth Justice Agency figures show that victims are present at 67% of all conferences¹⁷⁵ and the vast majority express satisfaction with the process. However, the current statistics are based on the 'very wide restorative definition of direct, indirect and corporate or community victim'¹⁷⁶ with no clear figures available regarding attendance of direct victims. Of the two thirds currently included within statistics, approximately 50% of 'direct victims/individuals representing victims' do not attend conferences.¹⁷⁷ Include Youth welcomes the Youth Justice Agency's current review of 'the measurement of victim attendance, participation and satisfaction as part of an overall corporate review.'¹⁷⁸

The presence of PSNI officers at Youth Conferences is challenging for young people. The Criminal Justice Inspectorate Northern Ireland (CJINI) report suggests that without reliable and relevant data it is not possible to ascertain the impact of police presence on relations between the police and young people. Maruna et al (2007) note that the presence of the police can be counterproductive.

The number of formal complaints made by young people about the process is low, however this reflects a general feature across the justice system for children and young people. The CJINI report states that some young conference participants were unaware of how to make a complaint and recommended that this process be explained fully to all young people and that they are made more aware of the complaints process. The 2006 evaluation stated that 21% of young people had not been informed of their right to legal advice (Campbell et al, 2006).

Possible solution

There are existing and previous multi-agency diversionary processes that could better deliver for children who are involved in low-level non serious offending behaviour that could divert children from the formal justice system as early as possible. These include the Child Intervention Panels (CIP) model currently being piloted by PSNI in South Eastern Health & Social Care Trust area, which is remarkably similar to the now defunct Juvenile Liaison Bureau run by PSNI or the Children's Panel formerly run by Youth Justice Agency, through Community Services. Such models should be relocated within communities. Engagement with the Family

¹⁷⁵ Op cited at note 160

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Ibid

Support Hubs currently being piloted in the Western Health and Social Care Trust area should be developed. These Hubs (often run by NGOs) receive referrals from all agencies concerning children and families who have complex needs and require a multi-agency but co-ordinated approach. The Hubs also undertake Understanding the Needs of Children in Northern Ireland (UNOCINI) assessments and refer children to social services gateways teams if relevant issues are present. Community based restorative conferences and family group conferences could be a method of intervention of Family Support Hubs. We believe that these could be both cost-effective diversionary disposals delivering positive outcomes.

Recommendations

- Police officers should, as first point of contact with children in conflict with the law, act as gatekeepers, diverting out of the formal system redirecting children and families to welfare-based support services within the community. Referral and assessment of the child's and families needs by the appropriate agency should be expedited and lead to the development of an individualized plan of support for child and family and victim if necessary.
- Resources currently targeted towards Diversionary Youth Conferencing should be redirected community based and holistic interventions such as the Family Support Hub model.
- A comprehensive critical and independent qualitative research project should be commissioned to examine the extent to which current youth conferencing processes, including diversionary youth conferencing, comply with proportionality and child rights standards; what the real experiences of and outcomes for young people, their families and victims has been.
- Detailed proposals as brought forward for consultation on record keeping to ensure transparency and rights compliance.

Community-based restorative justice

International standards

While community-based restorative justice was not specifically referenced in the United Nations Convention on the Rights of the Child (UNCRC), as an approach it is clearly consistent with provisions contained in Article 403 (b).

The Beijing Rules make specific reference to restorative approaches, noting that “programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended”.¹⁷⁹

UNCRC General Comment No 10 on Children in Juvenile Justice, in outlining the underpinning principles of a comprehensive, child rights compliant policy notes that the protection of the best interests of the child dictates that “the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders”.¹⁸⁰ It further notes that there should be no contradiction between such an approach and attention to effective public safety.

In detailing the types of interventions to be considered by states which do not involve resort to judicial proceedings General Comment No 10 draws attention to “family conferencing ... and other forms of restorative justice including restitution to and compensation of victims”.¹⁸¹

Additional non child-specific international human rights standards also support community based restorative justice. These include the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matter¹⁸², the EU Framework Decision on Restorative Justice¹⁸³ and the Council of Europe’s Recommendation Concerning Mediation on the Use of Restorative Justice.¹⁸⁴

The Community-Based Restorative Justice Protocol issued by the Northern Ireland Office in 2007 stipulated that all schemes will operate in full accordance with the UN Convention on the Rights of the Child among other equality and human rights legislative requirements.¹⁸⁵

Current situation

Community-based restorative justice schemes operate in Northern Ireland in response to low level offending by young people. These schemes operate in delicate, complex and unique

¹⁷⁹ Op cited at note 33 Commentary on Rule 11.4

¹⁸⁰ Op cited at note 6 paragraph 10

¹⁸¹ Ibid paragraph 27

¹⁸² United Nations Economic and Social Council (2000) *Basic principles on the use of restorative justice programmes in criminal matters*, ECOSOC Res. 2000/14

¹⁸³ http://www.restorativejustice.org.uk/resource/european_union_council_framework_decision_99_19/

accessed 14 March 2011

¹⁸⁴ Council of Europe (1999) *Committee of Ministers’ Recommendation No. R (99) 19 to Member States concerning Mediation in Penal Matters*. Council of Europe

¹⁸⁵ Northern Ireland Office (2007) *Protocol for Community Based Restorative Schemes*. Belfast: Northern Ireland Office. paragraphs 5 and 6

context. They have had to deal with a number of sensitive issues including: their development through the conflict, issues concerning acceptability of policing within certain communities, the activities of paramilitary organisations and vigilante groups, high rates of poverty and material deprivation. Established in Republican and Loyalist communities, these community development projects negotiate the controversial treatment of children and young people such as paramilitary punishment beatings, control of movement within communities, 'naming and shaming' of young people and their alleged offences. They aim to challenge and reduce offending or harmful behaviour in communities, develop opportunities for reconciliation of offenders and victims, and encourage safe environments in a context where there is a lack of trust within communities relating to intervention by statutory agencies.

In November 2008, the two main community-based restorative justice schemes (Community Restorative Justice, Ireland and Northern Ireland Alternatives) were accredited by the Criminal Justice Inspectorate Northern Ireland (CJINI) to implement the protocol developed by the Northern Ireland Office (NIO). This accreditation process was more vigorous and intrusive than that to which any other voluntary or community sector organisation has been subjected. The protocol established the rule that all criminal cases must be reported to the police, with or without the consent of the young person or their family.

The evidence on community-based restorative justice (CBRJ)

Include Youth supports the principles and ethos of restorative justice, and diversionary measures which seek to steer children and young people away from the criminal justice system. There is a positive role for community-based restorative Justice programmes in Northern Ireland within this process and the success of the existing programmes has been significant in a society emerging from conflict. Community based disposal measures which have the support and trust of local communities through the use restorative principles and practices are important contributors to transition. Processes such as Street by Street (East Belfast Alternatives) which are centred on strengthening and supporting young people, their families and communities are more likely to ensure prevention of offending and anti-social behaviour and the effective diversion from prosecution. Community-based restorative justice (CBRJ) has played a pivotal role in the conflict transformation process that Northern Ireland is currently undergoing, not least as it affects policing and justice.

Young people's views on community-based restorative justice

As part of Include Youth's response to the Northern Ireland Office (NIO) Draft Guidelines for Community-Based Restorative Justice Schemes in 2006, it consulted with a range of young people in community and custody based settings.

As the following statements illustrate, there existed a range of views among young people in relation to the Schemes, reflecting the often harsh realities facing marginalised young people:

"I wouldn't trust them [paramilitaries], but I'd give it [community-based restorative justice] a go. It's better than getting beat. But I'd still be suspicious, on my guard."

"You would give it [community-based restorative justice] a try."

"You would do it [community-based restorative justice] to get the paramilitaries off your back. But you still wouldn't trust them."

These comments are a stark reminder of the challenges and harsh realities involved in brokering a shared and common vision of community-based restorative justice in a transitional society.

Recommendations

- Continued and sustained support for existing community-based restorative justice programmes.
- Adequate resourcing to fulfil their important community functions including taking a central role in diversion from prosecution and formal criminal justice processes.
- Community run restorative justice processes should be available in all communities in Northern Ireland.

11. Diversion from re-offending

Include Youth defines this to mean any activity undertaken with a young person who has received a conviction for a criminal offence.

Non custodial disposals

International standards

Article 40(4) of the United Nations Convention on the Rights of the Child (UNCRC) stipulates that a variety of non custodial dispositions must be available to ensure that children are dealt with in a manner appropriate to their well being and proportionate to their circumstances and the offence.¹⁸⁶

The UNCRC General Comment No 10 on Children in Juvenile Justice establishes that a country's law "must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives to institutional care and deprivation of liberty....to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time".¹⁸⁷

UN Rules in relation to juvenile justice provide more detailed guidance on the protections required regarding the use of non-institutional disposals for children and young people.

A range of disposition measures should be available to the competent authority to avoid institutionalisation.¹⁸⁸ Conditions to be observed by the young person should be practical, precise and as few as possible. They should be aimed at reducing the likelihood of relapsing into offending behaviour and increase their chances of integration, taking into account the needs of the victim.¹⁸⁹ The young person should receive an explanation, orally and in writing, of these conditions including her/his obligations and rights.¹⁹⁰ Breach of conditions may result in modification or revocation of the sanction, but this outcome should be made by the competent authority only after a careful examination of the facts adduced by the supervising officer and the offender.¹⁹¹ Failure of a community sentence should not lead automatically to the

¹⁸⁷ Op cited at note 6 paragraph 70

¹⁸⁸ Op cited at note 33 Rule 18.1

¹⁸⁹ United Nations General Assembly (1990) *United Nations Standard Minimum Rules for Non-custodial Measures* (Tokyo Rules) General Assembly Resolution 45/110 Rule 12.2

¹⁹⁰ Ibid, 12.3

¹⁹¹ Ibid, Rule 14.2

imposition of custody. A sentence of imprisonment should be imposed only in the absence of other suitable alternatives.¹⁹²

Efforts should be made to provide young people, at all stages of the proceedings, with necessary practical and material assistance as well as emotional and social support to facilitate the rehabilitative process.¹⁹³ There should also be opportunities to strengthen links with the community and promote reintegration into society.¹⁹⁴

Current situation

There is a range of non-custodial disposals available for children and young people aged 10 – 17 years old supervised by both the Youth Justice Agency and Probation Board of Northern Ireland (PBNi) and it is not uncommon for young people to be subject simultaneously to the supervision of both agencies.

In 2006, 93% of 10-17 year olds convicted and sentenced received non-custodial dispositions. The main disposal was Community Supervision (29%), with smaller proportions receiving a Youth Conference Order (19%), or a conditional discharge (16%).¹⁹⁵

Court ordered Youth Conference

The Youth Justice Agency Annual Report (2008/09) notes that the Youth Conference Order accounted for 50% of all court disposals over the course of that year. In 2009-10 there were 697 court ordered youth conferences.

Most recent figures reveal that reoffending rates (47%) are comparable to other community orders except probation which is higher. Young people's experiences of youth conferencing are instructive, especially those who have had numerous conferences and disposals. Bearing in mind the level of trauma and victimisation which many young people have experienced, it is questionable how long-lasting their "victim empathy" is or even if they have developed any at all.

"Youth conferencing was ok – I thought it would help when the case came to court, so I did it. I did feel sorry for the victim - him or her – I've had a few. The staff were sweet."

¹⁹² Ibid, Rules 14.3 and 14.4

¹⁹³ Op cited at note 33 Rule 24.1

¹⁹⁴ Op cited at note 190 Rule 10.4

¹⁹⁵ Northern Ireland Office (2008) *Court Prosecutions for 10 – 17 Year olds*, Research and Statistical Bulletin 12/2008, Belfast: NIO

“It keeps you from going to jail, but it puts your head away.”

“I didn’t like the conference, but I liked the people. It made me feel wild bad – it stopped me doing crime for a few days – until you get a load of drink or blues in you then you just go out and do more. Until you get a conference again, then you feel bad again.”

“I knew I did wrong but it wasn’t good for me.”

“It was supportive for me, ‘cos they talk to you about drugs and all, what’s going on in your life.”

“Anything that’s not prison isn’t a punishment.”

A way forward

There is concern that there are too many disposals available for young people. This leads to confusion and many young people have been given numerous Orders and have been through various multi-layered processes, dealing with many professionals along the way. As one Include Youth practitioner states *“young people are ordered out.”*

Contrary to public perception, the young people rarely hold others responsible for their offending. They take personal responsibility, questioning the emphasis of these processes. Include Youth has been impressed by anecdotal evidence from the Priority Youth Offending Programme and this suggests that this intervention (e.g. circles of support and a multi-systemic therapeutic -type approach) could be implemented across the Youth Justice Agency.

Young people have practical suggestions regarding what may support them to cease offending. These include:

- more programmes which include activities and events
- support to access education, training and employment
- support in tackling drug and alcohol use
- support from a key-worker who can advocate for them and guide them through the maze of ‘orders’ and conditions

“See if I had a job, I wouldn’t do any crime.”

“You need support – to get a job or stay off drugs, help to try and get on with your life.”

“Advice, people encouraging you supporting you.”

Delay

International standards

General Comment Number 10 states:

“for children in conflict with the law the time between the 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 stigmatized.

Article 40 (2) of the United Nations Convention on the Rights of the Child (UNCRC) requires “to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.”

Young people are frustrated with the continuing delay in relation to disposal of cases:

“A quicker court process – you need action to happen quickly, as soon as possible after the offence.”

There are legislative targets of thirty days for a Public Prosecution Service (PPS) Diversionary Conference. Delay in processing cases has been the subject of a number of reports. In Criminal Justice Inspectorate Northern Ireland’s (CJINI) report ‘Avoidable Delay’ inspectors suggested ‘there should be a specific target for reducing delay in youth cases’. The report found that published case processing times for youth court cases are over twice as long in Northern Ireland as England and Wales. Youth cases can be in the system for some time before being referred to the Youth Conference Service. The average number of days between the incident being reported and a conference being completed rose from 181 in 2004 to 210 in 2007.

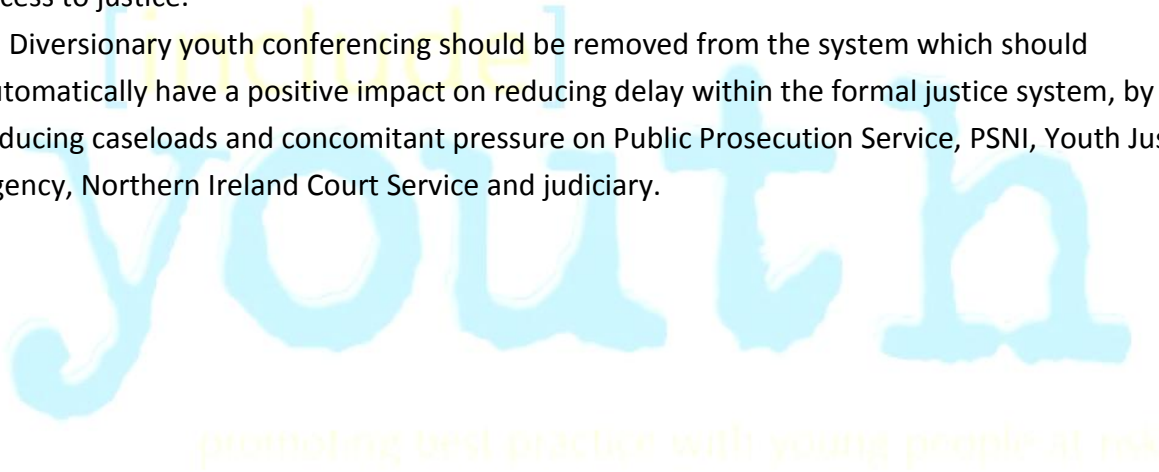
Although there have been recent improvements, the latest statistics for 2009/10 show that youth charge cases take on average 25 days longer than adult cases. In 2009/10 it took an average of 148 days to process a charge case in the Magistrates Court. The most evident difference between adult charge cases and youth charge cases, relates to the prosecution stage, where the time taken between the file receiving the PPS to a decision being taken was 18 days for adults and 27 for youth cases. Adult charge defendants took an average of 82 days from PPS decision to disposal compared to 97 days for youth court defendants.

The average charge to completion time in England and Wales in magistrates’ courts was 38 days in June 2009. This compared to 148 days in youth charge cases in NI and 283 for youth summons cases in 2009/10.

The impact of delays cannot be underestimated, particularly for young people. The Criminal Justice Inspectorate Northern Ireland's (CJINI) reports have acknowledged that young people are more negatively affected by delay and have called again for priority to be placed on reducing delays for young people.

Recommendations

- The Youth Justice Agency should be re-defined to that of a specialist and sole body overseeing youth justice arrangements for under 18s.
- The Youth Justice Agency's remit should be changed to include: meeting the needs and protecting the rights of young people in conflict with the law.
- An action plan should be drawn up by the criminal justice agencies which is time bound and resourced to reduce delays between arrest and sentencing whilst ensuring due process and access to justice.
- Diversionary youth conferencing should be removed from the system which should automatically have a positive impact on reducing delay within the formal justice system, by reducing caseloads and concomitant pressure on Public Prosecution Service, PSNI, Youth Justice Agency, Northern Ireland Court Service and judiciary.



12. Custody

International standards

The United Nations Convention on the Rights of the Child (UNCRC) (Article 37b) and other international standards affirm, the placement of a young person in an institution should always be a disposition of last resort and for the minimum necessary period.¹⁹⁶

In 2008, the UN Committee noted its concern that “the number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort”, and that “the number of children on remand is high”.¹⁹⁷ The UN Committee recommended that the UK government “develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle”.¹⁹⁸ Advice presented by the Northern Ireland Human Rights Commission to the Secretary of State has also stated that custody should only be used as a last resort.¹⁹⁹ The European Network of Ombudspersons for Children stated: “The only legitimate reason for detaining children, before or after trial, must be that they pose a serious and immediate risk to others”.²⁰⁰ Even in these cases, use of custody should be constantly reviewed and alternatives considered.

Article 37c of the United Nations Convention on the Rights of the Child (UNCRC) emphasises that every child or young person deprived of liberty should be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of people his/her age.

Current situation

The Prison Review Team (PRT), established under the Hillsborough Agreement which established the devolution of policing and justice to Northern Ireland, issued its Interim Report in February 2011, and recommended that:

¹⁹⁶ Op cited at note 33 Rule 19.1; Op cited at note 83 Guideline 46; Council of Europe (2006) European Prison Rules Rule 3; Op Cited at note 190 Rule 6.2; Op Cited at note 82, Rule 2

¹⁹⁷ Op cited at note 40 paragraphs 77c and d

¹⁹⁸ Ibid paragraph 78b

¹⁹⁹ Northern Ireland Human Rights Commission (2008) *A Bill of Rights for Northern Ireland. Advice to the Secretary of State*, Belfast: NIHRC,p25

²⁰⁰ Op cited at note 50

“Children and young people under 18 should not be held in Hydebank Wood. Suitable accommodation for all children that meets the best interest of the child should be found on the Woodlands site or elsewhere”.²⁰¹

The Prison Review Team (PRT) dismissed the claims that some children are too difficult and too disruptive to be managed in Woodlands Juvenile Justice Centre or that some children are held in Hydebank Wood Young Offenders Centre (YOC) because they have already had a custodial sentence within the last two years or because they are 17 and will become 18 during the sentence as inadequate reasons: “for holding juveniles in an environment that is entirely inappropriate for them. It can result in the most difficult, damaged or needy children ending up in the environment least able to cope with them – in terms of the number and training of staff, the quality and safety of the accommodation, and the activities and interventions available.”

The Prison Review Team also stated that:

“Woodlands has in practice dealt with some very difficult and damaged children.... We would like to see that approach and those opportunities extended to those under 18s who need to be in a custodial setting and who cannot be or are not currently held there.”

Include Youth has a significant involvement with Hydebank Wood regarding young people’s participation. Young people have a sophisticated understanding of the purpose of custody even though this does not comply with their experiences, particularly in the case of the YOC.

“If you’ve done a big crime, you should get big time (like armed robbery, rape, murder, and kidnap). But petty time for petty crime doesn’t work.”

“Prison shouldn’t be about punishing – you shouldn’t get punished by the people in prison. The staff isn’t there to punish you; they’re there just to look after you.”

“You should be at least 18 before they put you in custody.”

“You’re treated like you’re nothing in here [YOC]; you’ve no power in here, no rights.”

“It’s because we’re nobodies, because they don’t care about us on the outside, we’re nothing, we don’t matter.”

“It makes you worse in here – the government should know what it does to you.”

²⁰¹ Prison Review Team (2011) *Review of the Northern Ireland Prison System. Conditions, Management and Oversight of all Prisons, Interim Report*: Department of Justice

The young people certainly felt the difference between the Juvenile Justice Centre (JJC) and Young Offenders Centre (YOC).

“It’s not like the Juvenile Justice Centre here, staff all there for your benefit, it’s all social workers and all there, but here it’s screws.”

The Department of Justice (DOJ) and the Youth Justice Agency should work to make the Juvenile Justice Centre (JJC) fit for purpose as a facility to hold securely those small numbers of young people for whom deprivation of liberty in a criminal justice setting is deemed necessary, in line with international standards. This will require plans to enable the smooth transition of 15- 17 year olds currently held in the Young Offenders Centre (YOC) being moved to the Juvenile Justice Centre (JJC). The service currently provided within the Juvenile Justice Centre (JJC) should be available to all young people who have been adjudicated as requiring detention.

The Juvenile Justice Centre (JJC) can accommodate 48 children. Include Youth submits that the following steps would ensure there will be capacity to house all children who require detention within the criminal justice system in Northern Ireland:

- raise the minimum age of criminal responsibility to 16 years
- reduce number of remands
- enact Custody Care Orders ²⁰²
- ensure custody is only used as a last resort and for the shortest appropriate period of time
- end the inappropriate use of custody for looked after children

These wide-ranging issues which will require commitment not just from the Youth Justice Agency, but also from PSNI, Northern Ireland Prison Service (NIPS), Northern Ireland Court Service, Probation Board for Northern Ireland (PBNI), Department of Education (DE), Department of Health, Social Service and Public Safety (DHSSPS), Department for Social Development (DSD) and judiciary.

The transition arrangements should take into account the ongoing concerns regarding conditions of detention for young people detained at Hydebank Wood Young Offenders Centre (YOC) which have been highlighted by successive independent inspections and research reports. These include insufficient separation of juveniles and adults in escort vans; overuse of

²⁰² Justice (Northern Ireland) Act 2002, Article 56

handcuffs; use of strip searching; excessive adjudication punishments; long spells in cells; poor health care; lack of education and training opportunities.

Progress regarding these issues must continue alongside development and implementation of the transition plan. The Juvenile Implementation Plan, officially endorsed in 2008, sets out procedures to enhance the general conditions and regime available to under 18s. This recognises the distinct and different needs of young boys but it remains a “sticking plaster” solution.

Use of remand

The overuse of remand in relation to vulnerable young people has been repeatedly highlighted by successive independent inspections and investigations by human rights bodies. During 2009/10 there were 475 admissions to the Juvenile Justice Centre (JJC). Of these, only 37 (7.8%) accounted for admissions of young people who had received a custodial sentence. The vast majority of admissions related to Police and Criminal Evidence (PACE) (200) and court-ordered remands (137) – i.e. 71% of all admissions.

Youth Justice Agency figures reveal that in 2009 75% of all young people remanded to the Juvenile Justice Centre by District Judges were detained for under 30 days, with over half spending 14 days or less in the Juvenile Justice Centre (JJC). Between 2005 and 2009, 87% of children and young people remanded to the Juvenile Justice Centre (JJC) were either released on bail, released by the court²⁰³ or had the charges dropped. (Table 11) These figures clearly demonstrate that custody is not being used as a measure of last resort. Four out of five of all children remanded to custody were considered not to be a risk to the community and eligible for bail – the question arises as to why they were remanded in the first place.

Northern Ireland Prison Service statistics²⁰⁴ show that during 2010 there were 109 remands, relating to 83 young people. The estimated average time spent on remand was 26.3 days, with the longest remand period being 188 days. In the same period 40 young people were sentenced to custody at the Young Offenders Centre (YOC), including eight who were sentenced for fine default, spending an average of 7 days in detention.

²⁰³ Released by Court means that the young person was not returned to the JJC from court and can include a number of different outcomes, e.g. non-custodial disposal, released on time served. (Source: Op cited at note 160)

²⁰⁴ Northern Ireland Prison Service written response to information request from Include Youth, 6 April 2011

Looked after children

A disproportionate number of children in the Juvenile Justice Centre (JJC) are from a care background. Recent figures reveal that over one third of total admissions to the Juvenile Justice Centre (JJC) are looked after children. In addition, the number of total admissions of looked after children under Police and Criminal Evidence (PACE) rose from 50 in 2007-2008 to 72 in 2009/2010, despite attempts to reduce these numbers.²⁰⁵

Given that looked after children account for approximately 0.4% of the total population of children under 16 in Northern Ireland, this statistic reveals a disproportionate use of custody, and in particular the use of Police and Criminal Evidence (PACE) and remand on these very vulnerable children in the care system.²⁰⁶

Mental health

Those under 18s who currently are accommodated in the Young Offenders Centre rather than the Juvenile Justice Centre are often those young people who display challenging behaviour, may be damaged and in need of immediate and effective support. Hydebank Wood Young Offenders Centre (YOC) is an inappropriate setting for these young people who very often need specialised therapeutic support.

There is currently a considerable number of professional staff dealing with mental health issues in the Juvenile Justice Centre (JJC), including Registered Mental Health Nurses. This was reiterated in a Criminal Justice Inspectorate Northern Ireland (CJINI) report of March 2010 that claimed that there is an appropriate coverage of experts in mental health in the Juvenile Justice Centre (JJC). The Criminal Justice Inspectorate Northern Ireland (CJINI) recommendation that a specialist child and adolescent child psychiatrist should be appointed to Northern Ireland to advise the criminal justice agencies is significant.

Youth Justice Agency figures reveal that on 7 October 2010 there were 28 young people in Woodlands Juvenile Justice Centre (JJC), 67% on remand; 32% had a diagnosis of attention deficit hyperactivity disorder (ADHD) (national average in general adolescent population is 2%); 86% had significant poly substance use prior to admission to custody; 32% were under the care of community Child and Adolescent Mental Health (CAMHS) prior to admission to custody; 32% were availing of drug/alcohol/poly-substance use services in the community; 42% had a history of current self injurious /suicidal thoughts.

²⁰⁵ Op cited at note 60

²⁰⁶ Ibid

After induction and Youth Justice Agency assessment 25% were under the care of Youth Justice Agency psychologist; 29% are under the care of Youth Justice Agency Psychiatrist; 35% presented with mental health problems associated with constant substance misuse (excluding self-harm/suicidal issues// drug-related mental health issues)²⁰⁷.

There appears to be a problem of obtaining relevant medical information on young people in the Juvenile Justice Centre (JJC). Medical records are not usually transferred to the Juvenile Justice Centre (JJC), because of the short time that many of the young people are there, and also a reluctance of behalf of GPs to prescribe when they have not seen the young person. Increasing the speed and quality of medical information would assist in developing more appropriate health care to the young people.

It is a concern that there is a gap in service delivery once the young person leaves the Juvenile Justice Centre (JJC). The Criminal Justice Inspectorate Northern Ireland (CJINI) report identified that there are a number of gaps in the continuity of mental healthcare for children and young people on release. Good work that may have been started within the Juvenile Justice Centre (JJC) may be more difficult to maintain on release. There is clearly a need for a relationship and service to be established between the young person and Child and Adolescent Mental Health Services (CAMHS), well in advance of release.

Education

While most of the young people's criticisms related to education provision concerns regarding vocational training also emerged from the discussion:

"You need help to get into technical college when you get out of custody."

The young people consulted recognised the importance of having skills and qualifications on release if they were to successfully reintegrate:

"You need help with a job: teach you how to do job interviews, training for it. If you got out and you got a job, you wouldn't want to lose it, you'd try hard not to lose it, and so you wouldn't get into any trouble. Plus, you'd have no time to re-offend."

²⁰⁷ Ibid

Young people's views on effectiveness of custody

The young people claim that being put in the Young Offenders Centre (YOC) or Juvenile Justice Centre (JJC) does not stop them offending:

"Young people shouldn't be in custody, because it doesn't work."

"Custody makes it worse because it just does. Like maybe if you got a wee while inside, maybe a month to put your head straight again, get off drugs. That'd work better."

Recommendations

- Custodial sentences should be decreased, ensuring that deprivation of liberty is a 'last resort', for the shortest possible period, and confined to those presenting serious, immediate risks to others, in line with international standards.
- The detention of children under the age of 18 at Hydebank Wood Young Offenders Centre (YOC) should be ended, and all enabling legislation should be repealed.
- The Minister for Justice should make a public commitment to end the detention of under 18's at Hydebank Wood Young Offenders Centre (YOC), and establish a transition action plan, with a clear timetable for completion with cross departmental support at Executive level.
- During the transitional phase, any young people detained at the Young Offenders Centre (YOC) should be entitled to full implementation of their rights. Specialist child and adolescent psychiatrist should be appointed, based in Northern Ireland, to advise the criminal justice agencies; efforts should be made to establish a relationship between a child or young person with mental health needs and Child and Adolescent Mental Health Services (CAMHS) in advance of their release; close working relationships and care pathways should be developed between specialist CAMHS and youth justice teams.
- Criminal justice agencies should collect statistics on the mental health of the children and young people that are within the criminal justice system and these should be shared with the health service.
- An independent and fully resourced advocacy service should be established within custody.
- All children deprived of their liberty should be treated with 'humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age' in line with Article 37 (c) and 40 UNCRC.
- All professionals working with children and young people should be aware of and receive training about the United Nations Convention on the Rights of the Child (UNCRC) and children's rights (Articles 4 and 42, UNCRC) and should be trained to respond to the special needs of children in line with the Beijing Rules, the Riyadh Guidelines and the European Prison Rules.

- Education and training should be a core provision for young people in custody.
- All children under the compulsory school leaving age should participate in education with statutory responsibility for the education of children in custody should be transferred from the Department of Justice to the Department of Education and all children should be entitled to access the national curriculum. All outstanding recommendations in relation to education and vocational training from the Northern Ireland Human Rights Commission's report 'Still in Our Care', the Independent Monitoring Board's annual reports, the Criminal Justice Inspectorate Northern Ireland (CJINI) Inspection Report and the United Nations Committee on the Rights of the Child should be fully implemented.

[include]
youth
promoting best practice with young people at risk

13. Rehabilitation and reintegration

International standards

Among the fundamental principles contained in the United Nations Convention on the Rights of the Children (UNCRC) for the treatment to be accorded to children in conflict with the law is that of treatment which takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society. The United Nations General Comment on Juvenile Justice makes it clear that this principle must be applied, observed and respected throughout the entire process of dealing with the child, including within and post custody.²⁰⁸

Other relevant UN standards provide more detailed requirements in relation to rehabilitation and reintegration : the objective of 'treatment' and 'training' of young people in custody is 'to provide care, protection, education and vocational skills , with a view to assisting them to assume socially constructive and productive roles in society'; rehabilitative interventions should include community and education based services and provision for young people who are homeless²⁰⁹ and young people demonstrating satisfactory progress towards rehabilitation should be offered conditional release.²¹⁰

Similarly, the Council of Europe Child Friendly Justice Guidelines emphasise the right of children and young people to " access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status".²¹¹

International standards also delineate standards in relation to staff working with young people in custody including the need for effective staff training,²¹² and a requirement that staff be carefully selected and possess qualities of 'integrity, ability and professional capacity'.²¹³

²⁰⁸ Op cited at note 6 paragraph 13

²⁰⁹ Op cited at note 83 Principles 5 and 6

²¹⁰ Op cited at note 33 (Beijing Rules) Commentary Rules 28

²¹¹ Op cited at note 33 (CoE Child Friendly Youth Justice Guidelines) paragraph 21 (c)

²¹² Op cited at note 82 paragraph 85

²¹³ Ibid paragraph 82

Current situation

A principal aim of the youth justice system is to prevent offending and reintegrate children and young people back into their communities.²¹⁴ The Charter for Youth Justice further underscores this aim and among its five aims are preventing and reducing offending by children and young people and making a positive difference and offering value for money.²¹⁵

The latest figures available in relation to rates of re-offending amongst young people released from custody act as a sharp reminder of the distance to be travelled in order to make these aims a reality, particularly in relation to young people who receive custodial sentences on conviction. According to figures released by the Northern Ireland Office on 'youth reoffending', results from the 2006 cohort:²¹⁶

- the one year re-offending rate for all youths discharged from custody was 70.7%
- within six months over three fifths (61%) of those discharged from custody had re-offended on at least one occasion
- 29.9% of those with no previous convictions re-offended within one year while the reoffending rate for those with 9 or more previous convictions was 66%.

The reconviction rates for young people involved in offending behaviour coupled with the cost of custody alone²¹⁷, without even considering the best interest of the children and young people concerned provide a strong imperative for greater investment in rehabilitation.

*"They spend £37,000 grand a year keeping one person in jail, but they could spend 15 grand a year getting someone a job and it would work better, it would stop them doing anymore [crime]."*²¹⁸

²¹⁴ Op cited note 203 Part 4, Section 53 (1).

²¹⁵ Criminal Justice Service Northern Ireland (2007) *A Charter for Youth Justice*: CJSNI

²¹⁶ Op cited at note 172

²¹⁷ Estimated to be £78, 750 per prisoner for 2009-2010 Source: Northern Ireland Assembly Research and Library Service Briefing Note on Cost Per Prisoner Place. NIAR 283-10 Paper 153/10 .

²¹⁸ Include Youth (2009, verified February 2010) *Young People's Response To Independent Monitoring Board Annual Report Hydebank Wood YOC and Prison 2007/8* pp 8-9

The case for investment in resettlement and rehabilitation

The logic of the view expressed by the young person above has been comprehensively recognised in the recent UK Ministry of Justice's Green Paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* "The economic and social costs of crime are far greater than those costs which offenders place on public services. Focusing on rehabilitation could therefore generate significant benefits to society through having fewer victims of crime, less damage and destruction of property and more offenders becoming productive members of society. In addition there could be cost savings to government through reduction in demand for services, such as the criminal justice system, and increases in taxable earnings".²¹⁹

Reducing the rate of reoffending is in everybody's interests. It is also, from government to local communities, everybody's responsibility. The challenging profile of young people in custody, including lack of educational attainment, lack of qualifications, a history of unemployment, homelessness, mental health problems, drug and alcohol addictions, lack of family support, resettlement and reintegration cannot be the responsibility of the Youth Justice Agency or Prison Service alone, but of necessity must involve all relevant government departments and agencies, as well as various voluntary and community organisations.

Supporting young people with resettlement on release from custody is a central factor in enabling them to make a successful transition from custody back into the community and to stop re-offending.

Woodlands Juvenile Justice Centre

There is an emphasis at a policy level within the Youth Justice Agency and Woodlands Juvenile Justice Centre on addressing young people's offending behaviour and on their reintegration into the community by making a positive contribution to their knowledge, life skills and experience.²²⁰ The importance of preparing young people for the return to their families and communities with a reduced risk of offending is also prioritised.²²¹

²¹⁹ Proven reoffending rates for young people in England and Wales are fairly similar to those in Northern Ireland; the proven reoffending rate for juveniles released from custody is 74%. (Source : Ministry of Justice Compendium of reoffending statistics and analysis Statistics Bulletin (November 2010) Executive Summary)

²²⁰ Juvenile Justice Centre (Northern Ireland) Rules 2008 articles 15 (1), 45 (1) and 45 (3)

²²¹ Youth Justice Agency *Corporate Plan 2009-2011*: YJA p 9

In practice however there are real challenges in operationalising these stated policy aims due to the high numbers of children on remand, whose pending criminal charges could be compromised by participating in particular programmes, and the fluctuating population, issues highlighted in the Criminal Justice Inspectorate's report in 2008.²²² This underscores yet again the concerns in relation to the high numbers of children held on remand within the Juvenile Justice Centre and the need for this pattern to be addressed.

Given the 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. While this is addressed in the Juvenile Justice Centre (Northern Ireland) Rules 2008²²³ the recommendations highlighted earlier in relation to strengthening links between the Education and Learning Centre in the Juvenile Justice Centre and community services apply here also.

Hydebank Wood Young Offenders Centre

Among the support and services young people coming out of Hydebank Wood Young Offenders Centre (YOC) require to stop them 'falling through the cracks' as it were are with accommodation,²²⁴ benefits and financial advice, healthcare services, addiction services and education, training and employment opportunities.

The Criminal Justice Inspectorate Northern Ireland (CJINI) in 2008 highlight a number of very specific issues around resettlement arrangements in Hydebank Wood Young Offenders Centre, including the lack of a specific strategy for juveniles, the lack of involvement of prison officers in the development and implementation of resettlement plans for the young people and the need for the introduction of a personal officer scheme.²²⁵

Accommodation

Research published recently by Barnardos in England has reinforced the arguments for greater investment in rehabilitation of young offenders, with the provision of suitable accommodation

²²² Criminal Justice Inspectorate Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre*, CJINI

²²³ Op cited at note 221

²²⁴ 35% of young people aged 16–25 felt a lack of accommodation was the factor most likely to make them offend. BromleyBriefings <http://www.prisonreformtrust.org.uk/uploads/documents/FactFileJuly2010.pdf>

²²⁵ Criminal Justice Inspectorate Northern Ireland (2008) *Report on an announced inspection of Hydebank Wood Young Offenders Centre*, HM Chief Inspector of Prisons and Chief Inspector of Criminal Justice in Northern Ireland, 5-7 November 2007, paragraphs 8.1, 8.7 and 8.4.

being recognised as a key element in the equation. Its research report 'No Fixed Abode' found that a young person caught in a cycle of homelessness and reoffending can cost the government £116,000 over three years, whereas suitable support can deliver savings of £67,000 for each child.²²⁶

Among the key supports young people identified as being required on release from Hydebank Wood Young Offenders Centre (YOC) were accommodation, money and support with linking into training opportunities:²²⁷

"I left Hydebank with nowhere to live."

"(should) prepare young people for coming back out, get them somewhere to live, get tech set up straight away."

"If there's nothing to do ...start drinking, can't come out and nothing to do."

Some young people indicated that they had difficulties with the length of time it took to process a fresh claim for social welfare while others reported no difficulties in this regard.

It is Include Youth's understanding that a Regional Reference Group established to address the needs of homeless 16-17 year olds in general has also examined the situation regarding under 18s on release from Hydebank Wood Young Offenders Centre (YOC) and has developed proposals that these young people have an Understanding the Needs of Children in Northern Ireland (UNOCINI)²²⁸ assessment carried out. The effect of this would be to determine which of these young people came within the ambit of the Children Order 1995, in which case social services would be responsible for their accommodation needs or alternatively if not so assessed then responsibility would rest with the Northern Ireland Housing Executive.

Include Youth supports such developments and urges 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. 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

²²⁶ Glover, J and Clewett, N. (2011) *No Fixed Abode: The housing struggle for young people leaving custody in England*, Barnardos

²²⁷ Consultation conducted by Include Youth with young people from Include Youth and Challenge for Youth for the Youth Justice Review Team 15 February 2011

²²⁸ Understanding the Needs of Children in Northern Ireland is a common assessment framework for assessing the needs of vulnerable children.

within the remit of social services, similar to legislative provisions which exist in Scotland and England, should be advanced without further delay.

Resettlement

Promising approaches – education, employment and training

There is a deficit in provision of appropriate training and pre-employment programmes which have the specialist knowledge and skills required to successfully engage with custody experienced young people, and to enable them to achieve successful outcomes. Programmes such as Northern Ireland Association for the Care and Resettlement of Offender's (NIACRO) Youth Employability programme and Include Youth's Give and Take Scheme can only meet the needs of a small proportion of such vulnerable young people. Issues around disclosure of criminal records can also have an adverse impact on custody experienced young people accessing mainstream training and employment opportunities.

The success of specialised training and pre-employability schemes such as Give and Take Scheme for young people post custody in enhancing their self esteem and self confidence and ultimately improving their employability 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% moving into further education or training.²²⁹

²²⁹ Curran, M and Boyle, C. 2011, *Evaluation of Give and Take Scheme: Include Youth*

A detailed case study of one young man who was referred to the Give and Take Scheme underscores the impact of such programmes.

Mark (not his real name) is 19 years of age and was referred to Social Services when he was 12 years due to concerns within the family. Prior to being placed in care Mark had experienced significant trauma, loss, rejection and multiple moves (20 different placements between 2002 and 2009). Mark has a significant criminal profile. His first conviction was when he was 12 years of age and he has a total of 92 convictions. He has spent time in both the Juvenile Justice Centre and Hydebank Wood Young Offenders Centre.

Mark agreed to being referred to the Give and Take Scheme by his social worker in June 2009 as he would be able to avail of one to one support. His referral form indicated that he would not be able to cope with mainstream education due to his poor literacy and numeracy issues resulting from his interrupted education. Initially preferring one to one work due to a lack of confidence in group based learning situations Mark quickly grew in confidence and progressed to group based work, developing a more positive attitude to engagement.

Mark speaks very positively of the Give and Take programme and how it has benefitted him:

"this was my last chance to give it a go. I'm sick of committing crime and I want to change my life around. They will help me."

"I've done more here than any other techs. I didn't go to class as I couldn't concentrate in large groups."

Mark believes that if he were not on the Give and Take Scheme he would be back in jail or dead as a result of his misuse of alcohol and drugs.

Mark's social worker believes that the Give and Take Scheme has been "the making of him." The social worker highlighted the ability of Give and Take Scheme staff to successfully work with Mark and to provide him with a package of support through which he has gained qualifications and has benefitted from a work placement in Homebase.

A key issue identified by young people in Hydebank Wood Young Offenders Centre (YOC) and Include Youth has been the lack of consistency and follow through of personnel working with them pre and post release.

Another significant development is the Catch 22 project in England, which provides young people in custody with 'Inspire Resettlement Brokers' whose role is to build a relationship with the young person whilst in custody and then to help them to find accommodation, training and employment or other services they need on release.²³⁰

If the current 70.7% re-offending rate among young people leaving custody is to be reduced there is clearly a need for much greater investment, and imagination, when it comes to addressing the resettlement needs of these young people. Young person centred services and programmes, in relation to accommodation, access to benefits, training, pre-employment and other aspects of the young people's lives require significant levels of investment which are not currently being provided.

Recommendations

- The overriding emphasis from committal to release should be geared towards the re-integration of young people into their communities and into society.
- All of the outstanding recommendations on rehabilitation and reintegration in both the Criminal Justice Inspectorate Northern Ireland and Independent Monitoring Board's reports should be implemented.
- Specialised employability schemes should be supported to provide training and pre-employment opportunities for custody experienced young people.
- The needs of this particular group of vulnerable young people should be addressed within the NEETs Strategy (for young people not in education, employment or training).
- There should be consideration given to the appropriateness of disclosure of criminal records, particularly in relation to juvenile cautions and convictions, other than Schedule 1 offences.

²³⁰ <http://www.catch-22.org.uk/Services/Detail/Inspire-Resettlement-Service> accessed 11 March 2011

14. Complaints

International standards

United Nations Committee on the Rights of the Child 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.’²³¹

It is the experience of Include Youth that 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.

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.

²³¹UN Committee on the Rights of the Child (2003) General Comment No 5, paragraph 8

Complaints against the PSNI

Accountability is a core principle underpinning the programme of policing reform stemming from the Patten Commission. The mechanisms in place for children and young people to make complaints, their awareness of these mechanisms, how complaints are investigated and how the PSNI responds to the outcome of those investigations, are crucial elements in ensuring accountability and in building confidence among children and young people in policing. Central to the duties of the Northern Ireland Police Ombudsman's office is the securing of "an efficient, effective and independent police complaints system"²³² and to recommend, where appropriate, prosecution and or disciplinary action against officers.

Regrettably the experience of children and young people in relation to complaints against the PSNI has been far from satisfactory and indicating that existing mechanisms do not operate effectively for children and young people or take into account their best interests.

Research jointly commissioned by the Policing Board and the Police Ombudsman in 2003 found that level of awareness of Police Ombudsman among young people was low, with only half the sample of over 1,000 young people aware of the office.²³³ It recommended that given the large number of complaints made by young people a team should be dedicated within the Ombudsman's Office to investigate and process with complaints by young people.

In a review of the handling of complaints in the criminal justice system between November 2005 and October 2006 many of the young people in the Juvenile Justice Centre stated they wanted to complain about how they had been treated by the PSNI (in terms of the degree of restraint used and/or discriminatory attitudes and reactions) but did not because they considered they would not be believed.²³⁴

While not making a specific recommendation in relation to complaints, the Review commented that both the PSNI and the Police Ombudsman are concerned by their failure to reach young people and indicated that both bodies are working with partners to "raise awareness among young people of their respective roles and to include young people very directly in the decision-making process".²³⁵

²³² www.policeombudsman.org

²³³ Institute for Conflict Research (2003) *Young People and Politics in North Belfast: An outline of a survey by the North Belfast Community Research Project*. Belfast. Institute for Conflict Research.

²³⁴ Criminal Justice Inspectorate Northern Ireland and NICCY (2007) *The Handling of Complaints in the Criminal Justice System. A review of how the main Criminal Justice Organisations deal with complaints*, Belfast: CJINI/NICCY page 12

²³⁵ *Ibid* page 109

Young people consulted by Include Youth indicated that they had very little faith in either an internal complaints system within the PSNI or an external system such as the Police Ombudsman's Office. They expressed the view that once young people were known to the PSNI any complaint they made would not be taken seriously:

*"If you've offended they don't care if you're a victim."*²³⁶

"If you have a criminal record they are hardly going to take your word."

"Even if you don't have a record ... they (the PSNI) think they have the power."

*"They don't **think** they have the power, they **have** the power."*

This power imbalance between young people and the PSNI was raised repeatedly by young people, particularly in relation to their lack of confidence in any complaints system, "the PSNI would just bin it,"²³⁷ but also more broadly regarding how they were treated in general by the PSNI.

A further significant issue is the failure by that the Police Ombudsman's Office to record complaints from under 16s, the lowest age bracket for recording being 16-24 years of age. Yet the previous Police Ombudsman, Nuala O'Loan, acknowledged there was an over representation of complaints from children and young people.²³⁸

The introduction of a Complaints Reduction Strategy by the PSNI, in response to a substantial increase in complaints and allegations made against the PSNI officers over a ten year period is a positive development. However Include Youth is concerned to establish a specific focus on complaints from children and young people within that Strategy.

Recommendation

- The Police Ombudsman's Office should conduct an urgent review of the effectiveness of its police complaints system for all children and young people, with a view to developing a tailored strategy and action plan for engaging with children and young people. The strategy and action plan should address raising awareness of the service among all children and young people, but particularly those most vulnerable, a dedicated system by which to record complaints from all

²³⁶ Include Youth Young Voices consultation with young people in Woodlands Juvenile Justice Centre

²³⁷ Op cited at note 228

²³⁸ Interview with Nuala O'Loan, Police Ombudsman for Northern Ireland cited in NICCY QUB Children's Rights in Northern Ireland 2004, op cited at note 7

ages of children and young people, children and young people friendly mechanisms by which to record complaints and children's rights training for all staff in the Police Ombudsman's Office.

Complaints in Custody

Juvenile Justice Centre (JJC)

An inspection report from the Criminal Justice Inspectorate Northern Ireland (CJINI) in 2008 reported that the complaints procedures at Woodlands Juvenile Justice Centre (JJC) appeared to be operating well and that recommendations arising from previous inspections in the main had been implemented. They did, however, make a number of additional recommendations in their 2008 report and we would ask the Youth Justice Review Team to confirm that these latest recommendations have been implemented into the current complaints process at Woodlands Juvenile Justice Centre (JJC).

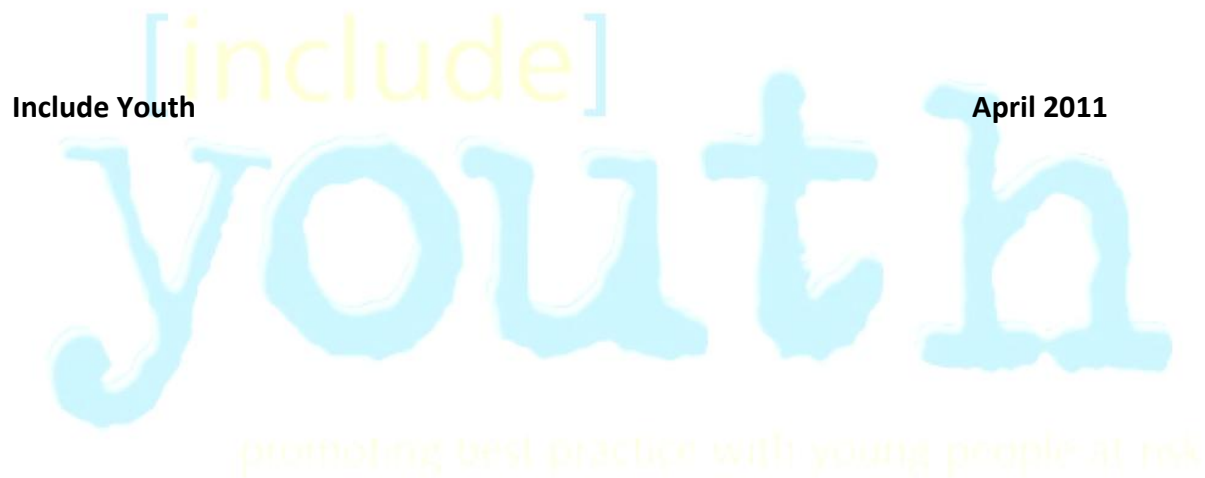
Recommendations

- 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).
- The Youth Justice Review Team should revisit the recommendations from the CJINI 2008 report regarding the complaints procedures at Woodlands and affirm their implementation.
- Children and young people deprived of their liberty should have the right to make complaints to an identifiable, impartial and independent body.

15. Conclusion

Northern Ireland's size and community infra-structure is ideal for the introduction of a Youth Justice system that meets the needs of children and young people and communities. Include Youth believes that this review process offers opportunities for such a system and that this was the intention of the Hillsborough Agreement.

Include Youth strongly contends that this submission offers a road map to the achievement of "compliance with international obligations and best practice" for Northern Ireland's Youth Justice System and processes. This submission is derived in over 30 years of evidence gathering, direct involvement with all relevant government processes, partnership with voluntary and community groups and engagement with practitioners and children and young people within the context of best practice and child's rights analysis.



Appendix One

About Include Youth

Include Youth is an independent NGO that has been in existence since 1979. The organisation promotes the rights and best interests of and best practice with young people in need or at risk. We undertake activities aimed at influencing public policy and policy awareness – both locally and nationally. Include Youth works directly with young people to support them to be engaged with policy decision making processes and to improve their employability. We produce resources and provide training, information and support to practitioners and organisations.

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

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

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

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

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



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