



Include Youth Response to Youth Justice Agency's Child Protection Policies and Procedures Consultation

February 2005

Introduction

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities which attempt to influence public policy and public awareness locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people whether in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

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 have 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.

General Comments

Include Youth is delighted to be involved in responding to the Agency's consultation on this most important issue, and views the production of draft Child Protection Policies and Procedures as a most welcome development. International standards are clear that all children and young people have the fundamental right to be free from cruel, inhuman and degrading treatment. We are pleased to see several references in the document acknowledging the fact that the children and young people who come to engage with the services provided by the Youth Justice Agency will be particularly vulnerable. It is our hope that comprehensive Child Protection Policies and Procedures will be put in place and robustly discharged across the Agency to ensure that all steps are taken to protect children from harm, and provide them with appropriate redress should this fail to be the case.

We have a number of general comments in respect of the document, as well as some specific points to raise about detailed provisions. We have had sight of a number of organisations which have submitted responses to the consultation, particularly Children's Law Centre and Northern Ireland Human Rights Commission. Our response raises some similar and additional matters which we see arising from the Agency's draft Child Protection Policy and Procedures Consultation. We hope that the Agency will find our input constructive, and we would be happy to discuss further any of the matters raised in our consultation response.

Include Youth is concerned that the consultation period was shortened to six weeks, which included the Christmas period. Whilst we appreciate the extension granted to us to enable to participate in the consultation exercise, we are concerned that more generally stakeholders may not have been given sufficient time to meaningfully engage in the process. We are of the view that as a matter of good practice the Agency should comply with its statutory requirements under Section 75 of the Northern Ireland Act 1998 and submit all policies to full consultation.

We note that the Agency does not consider that this policy will have any adverse impact on any of the named groups under Section 75. However, we consider that there may be significant equality implications arising from this policy – including gender, age, disability, sexual orientation, cultural and /or religious beliefs, those with or without dependants. We are therefore of the view that this policy ought to have been screened in for the purposes of conducting a full Equality Impact Assessment.

In addition to our concerns regarding the shortened consultation period and screening process, we wish to raise the issue of the Agency's statutory duty to consult directly with children and young people pursuant to Section 75. Include Youth did not receive a copy of the consultation document in a child accessible format, and would be grateful if the Agency could inform us whether this was produced. Related to this we would be most grateful if you could inform us of whether and how the Agency has consulted directly with children and young people in this matter. Not only is this necessary to comply with the Agency's commitment's under domestic legislation; direct participation of children and young people is also required for compliance with

Article 12 of the United Nations Convention on the Rights of the Child. It would also ensure that the Agency complies with the General Principles Section in the draft policy document, which states: *'children have a right to be heard, to be listened to and to be taken seriously. Taking account of their age and understanding they should be consulted and involved in all matters and decisions which may affect their lives.'* (3.1)

On a related matter, we would be grateful if the Agency would inform us of the system it intends to use in the analysis of responses to the consultation. In particular we are interested to learn of how you plan to weight different responses, and specifically what weight will be given to submission from children and young people. A proper analysis is essential in order to identify areas for action to assist the Agency in preparing the final agreed Child Protection Policies and Procedures document.

Finally in terms of accessibility more generally, and layout in particular, we must state that we found the draft document to be quite repetitive and a little confusing at times. For example, the draft YJA Child Protection Policy and Procedures contains a number of sections which are copied from existing texts. Take by way of example, Section 3 – General Principles: we believe that it would be much clearer and stronger were the Youth Justice Agency to state their guiding principles – and if they happen to replicate another existing policy, could this be referenced by way of a foot note / appendix? Include Youth very much welcomes the content of these General Principles outlined in Section 3, as reflecting many of the provisions of the UNCRC.

Best interests of the Child

We welcome the fact that the Agency states that the child's welfare is the overriding consideration in carrying out investigations (1.6). However, we believe that this standard should be the more rights based concept of the child's best interests, which is in compliance with international child's rights standards. We would point out that there are references made throughout the document to the 'needs' (1.1), 'rights', 'welfare'(1.2; 1.6) and 'best interests' (3.1) of the child. It is our view that this is somewhat confusing, and that in matters of child protection the paramount consideration should be the 'best interests' of the child.

UNCRC

Include Youth very much welcomes and commends the Youth Justice Agency for its clear statement of acceptance of the UNCRC – and ‘...the conventions and regulations that underpin the protection of children’ (2.2)

We are delighted to note the Agency’s acceptance of the obligations placed on it by the UNCRC to ensure the safeguarding and protection of all children and young people within the youth justice system. We look forward to all government departments and public bodies mainstreaming the UNCRC.

Children should never be detained in Adult Prisons

We note at 2.3 that the Agency draws on DHSSPS Guidance when referring to children in custody which states that ‘*Children are held in custody in prisons and juvenile justice centres.*’ Include Youth firmly believes that there are no circumstances which make it acceptable to place a child or young person in an adult prison. This is in line with the UN Committee on the Rights of the Child which recommended in its Second Periodic Report in 2002 that all children be ‘separated from adults in detention’.

We hope that policy makers, judiciary and agencies such as the Prison Service will take on board the issues raised by this consultation, including matters raised in responses, and that we will see an end to this practice which is in breach of both domestic and international standards.

There is no child protection policy in Maghaberry Prison, despite the fact that girls under 18 have been detained there (The Hurt Inside, NIHRC, October 2004). In addition, respect of Hydebank Young Offenders Centre, which holds children under 18 with adults, we understand that a Child Protection Policy Statement and Management Instruction Manual were produced in 2003. However, research conducted on behalf of the Northern Ireland Commissioner for Children and Young People found in 2004 highlighted issues regarding training needs for all YOC staff, and identified issues raised by the Visiting Committee of HM Inspectorate in 2002. It is essential that the YOC Child Protection Policy is fully implemented and independently monitored.

Whilst strictly outside the remit of this response, we wish to urge the Youth Justice Agency to use its offices to influence the introduction of legislation which would outlaw the detention of children and young people in adult prison facilities.

ACPCs

The draft Child Protection Policies and Procedures states at 2.8 states that the Agency intends to maintain its procedures consistent with those issued by Area Child Protection Committees (ACPCs), and that it will report annually to the EHSSB's ACPC. The Agency then asks whether this annual reporting mechanism should be extended to all the ACPCs - Include Youth believes that it would be advantageous to extend this reporting across all ACPCs, particularly in respect of monitoring allegations made by children in their areas as well as ensuring the continuity of care. Given that there are Community Services Projects across Northern Ireland, and Youth Conferencing Service is currently in Fermanagh and Tyrone and the Greater Belfast area, it is our view that Protocols for all ACPCs and Trust Child Protection Panels must be drawn up by the Agency.

Equality Issues

It is essential that the Agency's Child Protection Policies and Procedures are open to systematic independent monitoring, to ensure that problems can be identified and dealt with and that lessons learned can be integrated throughout the organisation. Furthermore, such monitoring is important in the interest of independence, accountability and ensuring confidence in the child protection systems. In addition comprehensive and independent monitoring provisions will help ensure that the Agency complies with its section 75 duty in terms of gathering data on affected groups.

The issue of monitoring is unfortunately only briefly dealt with in the consultation document. Include Youth believes that the detail of monitoring procedures must be included explicitly at all stages of the process, not only to ensure consistency in terms of recording and gathering information, but also in seeking to ensure that problems and identified and dealt with at the earliest opportunity. In addition an integral part of the monitoring process is the requirement that relevant staff receive training to ensure proper arrangements are in place. Reference is made at paragraph 9.10 to the need for

openness to consider that a single alleged incident may be representative of other serial events. Clearly systematic and comprehensive monitoring will support the Agency in detecting and proving such instances of organised, multiple or ritual abuse of children who are in its care.

On the wider Section 75 issue, we reiterate our concerns in respect of direct consultation and of the need to conduct an EQIA. However, we also wish to raise our concerns at the selective way in which only some of the named groups in S75 receive mention at different parts of the document, and would ask the Agency to inform us as to their reasoning in this matter.

For example, at Section 2 – Child Protection Policy Statement – the Section 75 duty appears only to extend to persons in respect of their religious belief, political opinion or race. Why is this the case? On what basis was the decision taken to exclude disability, sexual orientation, gender, age, culture? When one examines the General Principles at Section 3, however, the full list of groups which appears in the Northern Ireland Act 1998 appears (with the exception of reference to people with or without dependants) (3.1).

Clearly as has been already stated, the Agency has a statutory duty to promote equality across all nine named groups which appear in the Northern Ireland Act 1998. Include Youth believes that it is unhelpful and quite misleading to make only part reference to this group in the document, especially in respect of explicit reference to Section 75.

It is well documented that there are gender specific child protection issues raised through this policy (see NICCY Research, and The Hurt Inside). In addition it is concerning that in regards to protections afforded to LGBT young people, they are not only omitted from the list at Section 2, but are also omitted at Section 4 when examples are given of main types of persistent bullying. There is a very important issue here in respect of visibility, and it is submitted that the Agency must explicitly make reference to equal protections for children and young people who are abused due to their sexual orientation, whether perceived or actual. In addition the Agency must explicitly provide examples of how this abuse can manifest – for example, by

listing at 4.7 ‘homophobic remarks’. There is another issue in respect of training for all staff around equality / rights and diversity issues.

Finally, on a general note, the draft should be rewritten in gender-neutral language, avoiding the use of ‘he’ to refer to both boys and girls.

Definitions of Child Abuse – Section 4

Related to the issue of sexuality is the question posed by the Agency in the draft Child Protection Policies and Procedures at 4.10 concerning sexual relationships between age peers, which asks whether the Agency’s position is too prescriptive. Here the Agency refers to the ‘duty of care’ which staff are under in relation to being alert to age peer friendships which could proceed to a sexual relationship, which is not permitted in custody settings. It is also stated here that in other settings staff should assess if there is an abuse of power which could be a matter of subsequent regret or recrimination. Include Youth believes that further information is required particularly on the rationale behind the policy and how it is intended to implement the policy, before we could give an equivocal answer to the question of whether this position is too prescriptive. However at this stage we would point out that young people have a right to respect for their private lives under Article 8 of the European Convention on Human Rights, implemented by the Human Rights Act 1998. And while it is inevitable that friendships and attractions will develop between young people of the same and different sexes, it is important to remember that young people in custody do have a right to private life. We fully appreciate that the Agency in custody / community services projects and through conferencing must strike a balance between supporting young people to enjoy safe and healthy peer relationships as part of normal adolescent development, and protecting children and young people in their care. We would be interested to have more information as to how the Agency will carry out this balancing act.

It is important to recognise at Section 4 that the abuse of children can arise not just through the actions of individual perpetrator(s) but also from institutional policies and practices, most notably the use of segregation cells and some forms of physical restraint (which is specifically referred to at paragraph 10.9). It is important that the

policy is flexible enough to investigate such issues and patterns of alleged abuse as well as allegations about individual incidents.

Information and Support for Children

We are pleased to note the Agency's acknowledgement early in the document that 'children who come into conflict with the law and particularly those placed in the youth justice settings can be *especially vulnerable*.' (Paragraph 1.3) Later at paragraph 9.2, the Agency highlights the fact that 'lessons from a series of inquiries into institutional abuse demonstrate that young people are more liable to *under-report abuse* than to make malicious allegations'. At paragraph 4.9, the Agency states that 'in any institution accommodating children and adolescents there are *likely* to be incidents of sexual abuse or conflict between residents' (emphasis added)

In this context it is imperative that all necessary steps are taken to protect these very vulnerable children and young people. It is equally important that the Agency ensures that these vulnerable children are fully informed of their rights and the protections they are entitled to, of how to assert these rights and protections afforded them, and of how to invoke procedures in the event of any infringement.

Central to this must be the provision of information in accessible formats. At paragraph 2.10 explicit reference should be made to the Agency providing all children and families with a copy of its Child Protection Policies and Procedures in accessible written format. Also, given the evidence concerning the underachievement of children and young people in the justice system, measures must be taken by the Agency to ensure that information is provided in a meaningful way to those who present with literacy difficulties.

It is our experience at Include Youth that very often young people 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.

Clearly children need to have information as one of the first steps towards them making an allegation of a child protection nature. However, this is only one piece of the jigsaw, to support these admittedly vulnerable young people to assert their rights.

We are pleased to recognise the Agency's commitment to educating and inducting children in an effort to ensure they understand what constitutes appropriate and inappropriate physical contact and how to develop protection strategies in abusive situations (paragraph 1.8) and implementing prevention and awareness strategies for children (section 9). Include Youth believes that it is essential to ensure that these systems are comprehensive and implemented fully for all children and young people in the youth justice system.

Advocacy

One of the essential components in supporting children and young people, especially those who are vulnerable, to make complaints, is advocacy. We are pleased to see at paragraph 5.2 the Agency's recognition that '*Children need the safeguard of being able to choose from a range of contacts with whom they can confide if they have concerns.*' It is essential that independent advocates are provided for all children and young people. Earlier in the document it is stated '*children with disabilities and other vulnerable children should be given additional support to express any concerns they may have*' (paragraph 1.8 k)

We note at 6.3 that the Agency outlines ways to support children and young people who choose to make a complaint, including encouraging them to have a friend or relative present during the interview stage. It is essential that support is encouraged at all stages of the investigation in order for the young person to feel as at ease as possible. It is our view that, as we recommended for the Agency's draft Complaints Procedure when we responded in January 2005, children and young people should have a right to a choice of avenues for support. The Agency should provide information to young people about independent specialist organisations which could support them to make a complaint— for example, Children's Law Centre's CHALKY, NIACRO's Independent Representative (IR) Scheme. This could be relevant in cases where a particular child who wishes to exercise their right to support is precluded from so doing because they do not wish to involve friend or family members, for a

number of reasons. For example, the relative or friend may be unable or unwilling to commit to the process; or the young person may feel that it is inappropriate to ask someone they know due to the sensitive nature of the disclosure.

In addition, in cases of a more serious nature, it may be in the best interests of the child to seek legal advice from a solicitor, and we believe that the young person should explicitly be made aware that they have a right to legal representation at any and all stages of an investigation under the Agency's Child Protection Policies and Procedures.

In addition, in terms of advocacy and protecting the rights of children, Include Youth is of the view that the contact details of the Commissioner for Children and Young People should be included. It is also imperative that the Agency takes steps to ensure that independent advocacy services are available equally to all children and young people with whom it comes into contact. We note that the IR Scheme is only available to children and young people in a custody setting. It is important that information for example about CHALKY and the Commissioner for Children and Young People is promoted across all the Community Services projects, and by the Youth Conferencing Service – for example place posters in prominent positions; distribute leaflets and other publicity materials to all young people availing of services; and include contact details in Agency's own materials.

Role of Co-ordinator and Designated Officer

While we welcome the appointment of a Co-ordinator for Child Protection within each Directorate and a Designated Officer for each Unit / Project, we are concerned that the roles and responsibilities are quite complex, and appear at times to be a little confused. For example, it appears that both the Co-ordinator (6.5) and the Designated Officer (6.13 iii) has responsibility for informing the Director of causes of concern. Clearly it is essential that there is a clear demarcation of roles and responsibilities, and we would respectfully suggest that if there is a lack of clarity in the draft Procedures, then there is likely to be confusion in practice. Regular training will be important in this area also.

Joint Protocol

Reference is made in Section 6 to the Joint Protocol for Investigation of Child Abuse by Police and Social Services. The Agency asks whether it is necessary to provide a copy of the Joint Protocol as an Appendix to the document. Include Youth believe that it would be beneficial not only to have the Joint Protocol added as an appendix to the draft policy, but that it should also be translated into a child friendly format. In addition, it is important that there is comprehensive and regular training provided on the Joint Protocol and its effective operation.

We have concerns that the Agency's Child draft Protection Policy appears to conflict a little in respect of the role of Police in implementing the Joint Protocol. At paragraph 1.4 the draft document states *'It is important, given their training and experience that CARE Unit staff should investigate the criminal aspects of all child abuse allegations'* When one examines Section 4, the Agency is rightly clear that Definitions of Child Abuse extend to physical, emotional, sexual abuse and neglect. However our concern arises at paragraph 8.4, where the Agency states that police officers CARE Unit *'are unlikely to take on minor assaults between children etc.'* Include Youth believes that all complaints of a child protection nature particularly those which emanate from custody, should fall to be investigated by officers from the CARE Units, within the terms of the Joint Protocol.

One of the key concerns of the NIHRC report *In Our Care* was the failure of police and social services to effectively operate their Joint Protocol on investigation of allegations of abuse. The investigation found that all complaints of abuse were referred directly by Juvenile Justice Centre management to the police CARE Unit which, in turn, referred them to uniformed officers. Social services were not directly involved in the investigation of allegations. Include Youth therefore welcomes the emphasis in the Draft Policy and Procedures on the responsibilities of both police and social services in the investigation of alleged abuse.

At paragraph 8.4, the Agency asks the question whether the demarcation of investigation roles within the police is too narrow an interpretation of what constitutes abuse. Include Youth is of the view that this demarcation of police investigative roles

is indeed too narrow. It is important to remember that a “minor assault”, which a child may be able to cope with in another environment, can cause significant harm in a detention setting where the child may feel unable to escape from the environment and may feel very threatened and alone. Therefore Include Youth considers it important that the CARE Unit takes responsibility along with social services for jointly investigating all child protection complaints within a custodial setting. We would agree, therefore, with the approach indicated in paragraph 1.4 but not with that in paragraph 8.4.

Independent element in investigation

Include Youth is of the view that inadequate attention is given throughout the draft Child Protection Policies and Procedures to the need for independence in the system. This is required in respect of investigations of abuse, monitoring patterns of alleged abuse and supporting the child to make allegations. We welcome the Agency’s commitment to establish safeguards at paragraph 1.8.c which include ‘*ensur[ing] that...there is a culture of openness [...] which includes external monitoring*’. However, the final Child Protection Policy should include details of how this monitoring will be conducted at all stages of the process. We note that the Agency’s draft Complaint’s Procedure consultation document proposes introducing Independent Advisors to the investigations process. Include Youth believes that there is merit in exploring the potential to introduce Independent Advisors to the Child Protection Procedures, whose role would be to support the child and ensure that the process was working in the best interests of the child.

Dealing with Allegations made against members of staff

Section 7 deals with the issue of allegations made against staff. We note at paragraph 7.7 that the Agency identifies three strands concerning allegations of abuse against members of staff – need for child protection services, criminal aspects and disciplinary procedures. We agree that the Agency should not pursue an investigation or gather evidence for the purposes of a disciplinary hearing, if a criminal investigation is ongoing, as clearly this could be prejudicial.

At paragraph 7.5 the consultation document refers to procedures which will be followed in respect of staff who are the subject of an allegation. We concur that in

situations where the abuse has been witnessed the member of staff must be immediately suspended. We note that in situations where an allegation cannot immediately be corroborated or refuted that the Agency will ensure that the staff member will not work with the particular young person or have unsupervised access to other children. Include Youth believes that as soon as a child protection allegation against a member of staff comes to light, a thorough risk assessment must be immediately conducted, with the paramount consideration being the 'best interests of the child'. Part of this risk assessment should examine whether it is appropriate for the member of staff to have supervised access to other children, or whether the person should be stood down, without prejudice, as is also provided for in the draft policy.

We note at paragraph 7.7 that if a decision is taken not to pursue a criminal prosecution that it is still necessary for the Agency to determine 'on the balance of probabilities' whether abuse has occurred. Include Youth believes that this concept must be clearly defined in order to ensure that decisions are formed on the same basis and reached in a consistent manner throughout the Agency.

In addition, clearly it is necessary to introduce an appeals mechanism to this procedure should the Agency decide not to conduct an internal investigation following the closure of the criminal investigation (paragraph 7.10). This appeals mechanism does not appear to be included in the draft policy document.

Also although we have made reference to this point earlier in this response, it is worth stating in the context of children making complaints against staff, that the paragraph 7.9 about support needs to be more detailed. In particular, while we are pleased to see the Agency's commitment that they will 'seek to ensure that they receive appropriate support', Include Youth believes that a comprehensive list of independent people should be included here – including solicitors. In addition, it is our view that the Agency must clearly state that access to independent support mechanisms will be encouraged among children / young people making a complaint, from the outset, and throughout the process. It is important that the child is supported throughout in a way that ensures the protection if the integrity of the process.

Section 8 Investigations of Cases of Child Abuse

At paragraph 8.6 the Agency makes reference to the withdrawal of allegations, and outlines the procedures to be followed, which include the child signing off the complaint in the presence of parent or appropriate adult, and being asked to give reasons. This issue was a source of some concern for the NIHRC in the *'In Our Care'* report, where they found in the context of custody that: *'at present there is no formal requirement for young people themselves to have to 'sign off' that they are content that a complaint has been properly investigated'*. Include Youth believes that procedures must be put in place to ensure that children and young people sign off on all complaints, as a matter of course. This will not only be in the interests of increased transparency and enhancing confidence in the system, but could also be an important monitoring tool to assess young people's satisfaction with the process.

We are somewhat confused by the provision at paragraph 8.7 which deals with standards of proof, but latterly makes mention of when a child could invoke the complaints procedure. Include Youth is of the view that the steps toward making and pursuing a complaint of a child protection nature must be very clearly set out. We would be grateful if the Agency could respond with more detail on these provisions at 8.7. Is it proposed that in the event of neither a criminal or civil court finding in favour of the complainant, that the child or young person should be given the opportunity to invoke the Agency's complaints procedure? It is our view that these cases will likely have arisen out of an initial child protection complaint. The decision for the Agency would then be whether or not to pursue an internal investigation, and we submit that failure to do so should activate the appeals mechanism, not necessitate the young person having to make a fresh complaint.

Independent Representatives

The NIHRC report *In Our Care* raised concerns relating to the process used when complaints are raised by young people through NIACRO Independent Representatives (IRs). Such complaints were not always effectively dealt with. This included child protection issues, such as bullying by other young people. Consideration should be given to how best to ensure that issues raised through IRs are

dealt with through the child protection system when appropriate and what support can be offered to young people in these circumstances.

Protection statement

Include Youth believe that the Agency should include in its Child Protection Policies and Procedures a clear and unequivocal statement to the effect that the child will suffer no harm, harassment or reprisals as a result of invoking the child protection procedures. Whilst this may be implicit in the document, we believe that an express statement is important not only to illustrate the Agency's commitment to this process, but also to ensure that the Agency complies with its obligations under Article 3 UNCRC to promote the best interests of the child.

Conclusion

Include Youth welcomes the opportunity to respond to the Agency's draft Child Protection Policy and Procedures. We believe its introduction is a very important step forward, and hope that the promotion and robust implementation of the Agency's Child Protection Policy and Procedures will bring us closer to the full realisation of all children and young people's rights within the youth justice system. We hope that the points raised in our response are helpful, and will contribute to the further development of the process. We will be happy to meet to discuss anything raised in our submission.