



## **Response to the Public Prosecution Service Consultation on draft Guidelines for Diversion**

### **Introduction**

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

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people 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.

Include Youth runs the Young Voices project, which is a participation project for young people who have been involved or are at risk of becoming involved in the criminal justice system, with the aim of supporting these young people to become involved in decision-making processes which impact upon their lives. Currently the Young Voices project supports young people in two groups – one drawing its members from the Greater Belfast area, and the second based in the Juvenile Justice Centre, Bangor.

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

## **General Comments**

Include Youth welcomes the publication of the draft Guidelines for Diversion, and is pleased to have the opportunity to make this submission to the Public Prosecution Service (PPS). We hope that you find the submission from Include Youth helpful in your deliberations.

Include Youth fully supports the principles and ethos of diversionary practices which seek to steer children and young people away from the criminal justice system, by supporting them to take responsibility for the consequences of their behaviour. We believe that diversion can help break the cycle of offending in which some children and young people may have become involved and divert them away from further involvement in the criminal justice system, so as to reduce the likelihood of them re-offending.

We have outlined below a number of issues in the draft Guidelines which we believe give rise to some concern.

## **Children's Rights**

Include Youth is disappointed to note that the current draft Guidelines fail to take cognisance of international children's rights standards, in particular the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and UN Standard Minimum Rules for Non-Custodial Measures 1990 (The Tokyo Rules). Moreover, whilst we welcome reference to article 6 of the European Convention on Human Rights at point 4.2.5, we believe that the draft Guidelines should be expressly set within the framework of these international standards, and should take account of relevant recommendations from the UN Committee on the Rights of the Child.

## **Informed consent**

*'What is a youth conference? Cos that's what I'm meant to be getting.'*  
Young Voices Participant

Although participating in either a process of Informed Warning, Restorative Caution or Diversionary Youth Conference, does not result in a criminal conviction for the young person it does have serious repercussions, as engagement will be recorded on their record from between 1-2½ years, and may also include their being placed on the Sex Offenders Register. In order to be children's rights compliant it is essential that participation in the PPS ordered Diversionary Schemes is not only free and voluntary but is also fully informed – put simply, the child must understand what they are agreeing to participate in.

Research into the detention and questioning of young persons by the police in Northern Ireland has found that *'many young persons were considered to have great difficulty understanding the cautions that are delivered under the Criminal Evidence (NI) Order 1988.'* (Quinn, K. and Jackson, J. *The detention and questioning of young persons by the police in Northern Ireland*, NIO Research and Statistical Series: Report No. 9, Chapter 7.3, page 97ff) Through our direct work with children and

young people at risk, and our work with the practitioners engaging with them, Include Youth is aware of cases in the past where children have admitted guilt and agreed to receive a caution, without fully being aware of the consequences of their actions, in terms of diminished employment opportunities. Moreover, the Quinn & Jackson research referred to above has found that sometimes children and young people who do not understand what is happening can convince adults that they do (in the case of this research, police officers, appropriate adults, solicitors), perhaps out of fear, because of their bravado and pretending to know more than they actually do.

*They do read you some rights but you don't have a clue what they're on about but. They sit and go, what is it, something about, 'You're under arrest' or something and I sit and go, 'Aye right. No sweat.'*

(Quinn & Jackson, 97)

Clearly the current draft Guidelines must be robust enough to ensure that the child's right to give informed consent will be protected as is required under Article 12 UNCRC, and Article 6 ECHR.

Particular challenges arise for the PPS with regards to children and young people who have additional needs, including learning disability, mental health or literacy problems. Jurisprudence from both European and Domestic courts is clear that in administrative and judicial proceedings – including diversion - the case must be dealt with in a manner which takes full account of the child's age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings. It is imperative that measures are put in place to ensure that all children, including those with a learning disability, mental health or literacy problems are provided with information in a format and manner which enables them to fully participate in diversion and to receive information in a way that they fully understand and which encourages the accessibility of the system.

Similar procedures must be developed to ensure the full participation of children and young people for whom English is not their first language.

It is imperative that those facilitators within the PSNI who are responsible for ensuring that the offender and their parent or guardian provide informed consent for the purposes of the Informed Warning and Caution are fully trained in children's rights, especially regarding issues around informed consent and on how to speak to children in a language and manner appropriate to their age and understanding. We submit that the Guidelines should also make express reference to how the issue of informed consent will be dealt with in respect of Diversionary Youth Conferences.

### **Delay**

*'I've been waiting 3 months for a conference– that's too long.'*

Young Voices Participant

We have concerns around how the guidelines as currently drafted could result in unacceptable delay in due process being administered. One of the advantages of diversionary approaches is that as administrative rather than judicial processes they have the potential to more swiftly seek to find a resolution to the problems identified. 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. However, it is imperative that the diversionary disposal is dealt with as speedily as possible. 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. In the past, the decision to proceed by way of diversion was taken and implemented by the police, often within a matter of hours, and had a significant impact on reducing recidivism rates - of 2562 cautions given to young people in 1999 only 20% re-offended. (NI Crime Survey)

However, following recent changes where the PPS now make all decisions with regards to disposals of children who have committed offences, we understand that delays of up to 6 months routinely occur between act and consequence. We respectfully submit that this period is much too long and the delay could significantly impact upon the effectiveness of any diversionary initiatives. Indeed, the young person may not remember the incident about which they are receiving the diversionary disposal, 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.

In addition, we would like to draw attention to the CJINI recommendation that “greater flexibility with regard to decisions on informal warnings and cautions to young people is required so that (in the words of the Criminal Justice Review) ‘cases are dealt with expeditiously’. The PSNI should therefore assume delegated responsibility for decisions on youth warnings and cautions.” (page 64 – Avoidable Delay, A thematic Inspection of Delay in the Processing of Criminal Cases in Northern Ireland’, May 2006)

The following quotes from young people involved in our Young Voices project illustrate the specialised nature of diversionary work, both at adjudication and delivery stage.

*‘I found that the Youth Diversion Officer actually helped me stay out of trouble; they behaved more like a social worker and actually kept me out of the courts where I could have easily been a number of times.’*

*‘They scare you at first with what they have to say, then they to talk to you and it helps you understand what happens to you when you do stuff.’*

Young Voices Participants

### **Discretionary Powers**

There is much emphasis placed in the draft Guidelines on the discretionary powers of prosecutors to decide when a diversionary disposal would be warranted. Youth believes that all PPS staff who are charged with this responsibility, must undertake training on children’s rights and child protection to ensure that they have the necessary assessment skills to make decisions on whether a diversionary disposal is in best interests of children and young people. This training should be updated regularly for all PPS staff.

**Role of Victim**

The draft Guidelines state that one factor to take into account when considering diversionary disposal is the ‘attitude of both the offender and the victim.’ (2.8) Whilst Include Youth strongly believes that victims must be informed and involved in cases as far as is practicable we agree that they should not be given any form of veto with regards to outcome for the young person.

**Community Based Restorative Justice Schemes**

Include Youth believes that the voluntary and community sector can make a significant contribution to the diversion of young people and strongly support any programme which endeavours to do so and is compliant with children’s rights and child protection principles and practice. We note that no mention is made of Community Based Restorative Justice Schemes within the draft Guidelines for Diversion, and we would strongly recommend that this situation be remedied, particularly in the context of Schemes who have signed up to the Protocols for Community Based Restorative Justice Schemes and been approved by the Minister for Criminal Justice. This is particularly relevant in light of our earlier comments in respect of potential for delay within the diversionary processes, given that one of the merits of CBRJ Schemes is their ability to implement diversionary disposals speedily. We strongly recommend that as Schemes sign up and begin operating within the context of the Protocols that the PPS will establish procedures to facilitate the early and effective use of CBRJ programmes with children and young people and the wider community.

**Conclusion**

Include Youth intends the above as a constructive submission and would welcome the opportunity to discuss any issues raised in our response. We wish to be kept fully informed of progress in the development of this important policy initiative and look forward to the issues raised and recommendations made in this response being addressed and taken forward. We would be grateful to receive a copy of your analysis of responses when same becomes available.

**May 2007**