



**Response to the Youth Justice Agency Complaints  
Charter Consultation**

**January 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.

Therefore Include Youth welcomes the Youth Justice Agency's Proposals for a Complaints Charter, as we believe it has the potential to impact upon many of the young people with and on whose behalf we work. We wish to make comments on both the draft Complaints Charter and the accompanying explanatory leaflet.

## **Explanatory Leaflet**

### **Consultation**

We are aware that the draft Complaints Charter has been devised over a period of time by a Working Group comprising the four Agency directorates, the NIO, the Social Services Inspectorate and in consultation with our organisation. We understand that young people from both the Juvenile Justice Centre and Community Services Directorate Projects were also involved in developing the sample young people's leaflet. Include Youth believes that this process is to be commended –

however, we are disappointed that this inclusive format has not been fully followed through into the Formal Consultation phase. We believe that in order to give stakeholders in the statutory, voluntary and community sectors, together with interested children, young people and their families an opportunity to comment on the proposals, the Youth Justice Agency should have adhered to good practice guidelines and extended the consultation period to 8 weeks. This would have facilitated the Agency's obligations under Section 75 of the Northern Ireland Act 1998.

Include Youth believes that publication of the Complaints Charter will be an extremely important document. It is essential that the YJA gets it right; however, as is often the case in these matters, 'the devil is in the detail'. We are therefore not convinced by the Agency's reasoning for shortening the consultation period, namely 'in view of the extensive consultation exercise carried out in relation to all the recommendations in the Criminal Justice Review', as any comments made in this regard were necessarily general in nature, and could not focus on specific proposals. Consequently, we recommend that the YJA extends the consultation period to 8 weeks, in line with the Equality Commission's Statutory Duty Guidelines

We are aware that at Paragraph 4 of the Policy and Procedures document, the Agency states that 'this document should be read in conjunction with the Agency's Child Protection Policy'. However, it has been not possible for us to do this given restraints of time imposed by the consultation deadline.

### **Implementation**

We are somewhat concerned by the YJAs proposed timescale for implementation, and consider that the length of time proposed to take on board changes, devise and deliver a training programme and a PR strategy, and appoint the Independent Advisor is much too ambitious. For example, we wonder whether it will be possible to collate, analyse, publish and incorporate any suggestions for change which the YJA / Working Group considers appropriate within the timescale proposed. In addition, we would expect that prior to implementation a training programme be devised and delivered to all staff in relation to the new Complaints Charter. Furthermore, we believe that the Agency must produce and disseminate widely publicity materials in child friendly and other formats in advance of implementation. And in respect of the

appointment of the Independent Advisor, Include Youth believes that this appointment must be made following an open and transparent recruitment process. We are concerned that in order to meet the 01 April 05 dead line some of these essential pre-implementation tasks, may not be carried out adequately or at all.

### **Draft Complaints Charter**

Include Youth are pleased to see the YJA commitment to the best interests of the child as the most important consideration in handling of complaints, in line with the recommendations of the UN Committee on the Rights of the Child in their last report on the United Kingdom Government in 2002. (paragraph 2)

Our primary concern in respect of the draft Complaints Charter lies in the proposal at paragraphs 31 and 32 that ‘the Chief Executive will inform the Independent Advisor of any reasons why either the recommendations or their fulfilment present difficulties and how these might be resolved’. Include Youth opposes the inclusion of this clause in the strongest possible terms, as we believe that this provision significantly diminishes the value and integrity of the entire complaints process. It renders the Complaints Charter, and in particular the role of the Independent Advisor as little more than toothless, and in our view contravenes the best interests principle laid down in Paragraph 2 of the draft Policies and Procedures.

We believe that this clause leaves the Charter in conflict with the Agency’s stated aim ‘to treat children and young people with fairness, justice and respect as individuals.’ (Paragraph 6) Indeed throughout the document the draft Charter espouses the aim to treat young people ‘with fairness’. It further outlines in the Key Principles section that ‘children and young people will be given whatever help and guidance they require to make a complaint and understand the procedure; and that the procedures are accessible and transparent with processes and outcomes recorded’ (see paragraph 12). However, what the Key Principles fail to mention is that a young person having had the courage and tenacity to make a complaint and see it through to the end, can be told by the Chief Executive that although his / her complaint has been upheld by the Independent Advisor, the recommendations made by the Independent Advisor to redress the situation will not be complied with by the Youth Justice Agency. We

believe that this will undermine the credibility of the Complaints Charter among young people, and reduce their confidence in the system.

Currently the draft Charter involves the child or young person up until Paragraph 31, which is the point where the Independent Advisor forwards a copy of his /her Report with recommendations where appropriate. However, the child is left without the right to ensure that the recommendations are being properly enforced – i.e. the child or young person does not have an effective remedy. The child is not even afforded the right to have the Chief Executive explain his ‘difficulties’ in fulfilling the recommendations, in the same way as the Independent Advisor does (paragraph 32).

It is essential that recommendations flowing from the Independent investigation of a Complaint are fully enforced. Furthermore it is essential that implementation and enforcement of the recommendations is independently monitored. These are serious procedural omissions in the draft Charter, which could potentially leave the Youth Justice Agency open to judicial review.

### **Monitoring**

Include Youth reiterates our belief that it is essential that implementation of all the Independent Advisor recommendations should be independently monitored.

### **Equality of Arms – the child’s right to be properly accompanied at all steps of the process**

At paragraph 7 the draft Charter acknowledges that young people ‘may find it difficult to express their worries and problems or challenge decisions made about them’. The Four Stage process is designed to facilitate resolution of complaints at the earliest stage and lowest possible level, principles which we endorse. However, it is clear that whilst it may be possible to resolve some complaints at the informal Step One stage, others will necessarily progress through to the more formal stages of investigation. We are therefore concerned that the procedures at Step One and Step Two concerning the young person’s right to have a person in attendance are not thorough or explicit enough, and potentially raise equality of arms issues.

Whilst we appreciate that Step One is informal, we would ask the question whether all discussions / notes etc from earlier steps of enquiry will form part of the ‘relevant factors’ associated with Step Three or Step Four Investigations? For example, if written notes of Step One / Two meetings are taken, agreed and signed off, who will assist the young person to do this if they (or if relevant, the person accompanying them) have literacy problems? Will a member of staff be afforded the opportunity to be accompanied by a member of staff / union representative etc. to meetings? (One would expect staff to take a complaint against them very seriously indeed, and take all available steps open to them to defend their position.)

Include Youth believe that the draft Charter must explicitly provide the young person with the opportunity to bring along someone from among a full range of family members, friends or professionals, to provide whatever support / advice / advocacy s/he considers necessary or appropriate at all stages of the complaint. Currently the list outlined in the draft Charter particularly at Step One we believe is too narrow. Why is there no mention at Step One of Social Worker or organisation protecting the rights of children, options which appear at Step Two? And why for example, are Children’s Law Centre’s CHALKY, NIACRO’s Independent Representative (IR) Scheme, or solicitors not mentioned explicitly in either stage?

In addition, it appears from the draft Charter that the young person’s entitlement at Step One to be accompanied at all is contingent upon ‘circumstances and availability’ (paragraph 17). Clearly this is not acceptable – if a young person wishes to be accompanied to a meeting to either make a complaint, or discuss the substance of such a complaint, then steps should be taken by the YJA staff member receiving the complaint to ensure that this happens.

## **Annex A**

### **Annual Report**

We believe that should the YJA continue (contrary to our advices) to allow the Chief Executive power to effectively veto recommendations made by the Independent Advisor, then the Annual Report should include the following additional information:

- Number of complaints which have or have had one or more Independent Advisor recommendations not fulfilled
- Number of Independent Advisor recommendations not fulfilled by Chief Executive; issues raised in recommendations; and reasons provided by Chief Executive for non-compliance.
- Table showing list of recommendations, date made, date of compliance, or whether compliance outstanding
- Number of outstanding Independent Advisor recommendations at year end
- Number of recommendations complied with at later date

### **Conclusion**

In conclusion Include Youth as an organisation committed to working to promote the rights and best interests of vulnerable and challenging young people welcomes the opportunity to comment on the YJA draft Complaints Charter. We believe that this is a very important document which will impact upon many children and young people. We therefore believe that it is crucial that the Youth Justice Agency gets it right , and we hope that the Agency will take on board our concerns, to produce a final Complaints Charter that truly does uphold the ‘best interests of the child’.