

include YOUTH

Response to PSNI Speedy Justice Equality Impact Assessment Draft Report

February 2013

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Include Youth

Include Youth is an independent non-governmental organisation that actively promotes the rights, best interests of and best practice with disadvantaged and vulnerable children and young people.

The young people we work with and for include those from socially disadvantaged areas, those who have had poor educational experiences, those from a care background, 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 young people on the Scheme are care experienced while over a third has a background in offending.

Include Youth also delivers an Employability Service on behalf of two of the Health Trusts for young people aged 16 + who have had experience of the care system. This service is designed to offer tangible and concrete opportunities to assist young people leaving care to prepare for, and engage in work.

Include Youth has also been a Specialist Support Provider to DEL's Training for Success Programme since 2007. This service helps improve retention and encourage progression for young people who present with multiple barriers to their learning.

The organisation also leads on collaborative initiatives (Youth Works and Start) across several sites in Northern Ireland, working with community based organisations to improve education, employment and training outcomes for the most disadvantaged young people.

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, in Woodlands Juvenile Justice Centre and in Hydebank Wood Young Offenders Centre.

Include Youth's policy advocacy work is informed by relevant international human rights and children's rights standards, is evidence based, including that provided by young people and practitioners and is based on high quality, critical analysis.

Reflecting the profile of the young people we work with, Include Youth's two main policy priority areas are employability and youth justice. We have engaged closely with the development by the Department for Employment and Learning of the recently published Pathways to Success Strategy as well as with the Department of Justice's reviews of youth justice and prisons as well as Reducing Offending and Faster, Fairer Justice initiatives

General Comments

Include Youth welcomes the opportunity to comment on this EQIA. We have been involved in this process since 2010 and have been engaging with the PSNI about it from the pre consultation stage.

We had many meetings with and correspondence between ourselves and the PSNI from the outset, to express our concerns about the operationalisation of Speedy Justice. As we outlined in the pre consultation stage, we were not convinced that this initiative would be in the best interests of children. We submitted a formal written response to the Service Procedures on Discretionary Disposals and Non –Court Diversion Decision from the PPS in November 2011 expressing our concerns in detail¹. This response is attached for your convenience. As part of that consultation we consulted directly with children and young people and would wish to draw attention once again to the valid and informative opinions expressed by the young people on this issue. We note that the Children's Law Centre response to the Service Procedures is contained within Appendix B of the EQIA Draft Report. We would welcome the Include Youth response also being attached in Appendix B.

Include Youth has very much welcomed the receptiveness of the PSNI to engage in discussion on this issue and welcome the willingness on the part of the PSNI to listen to Include Youth's views throughout the process.

As we have said from the outset, we are totally supportive of any initiative which is aimed at keeping young people out of the formal justice system. We think it is absolutely correct that

¹ Include Youth Response to PSNI Service Procedures on Discretionary Disposals and Non-Court Diversion Decisions from the PPS, November 2011.

young people involved in low level offending should be immediately diverted away from the formal system.

Include Youth agree with the concept of 'speedy justice' in principle, but have major concerns about how it is being operationalised. In many respects the principle is sound but the implementation is flawed. We are also not against police being given more discretionary powers but this can only happen if we have the necessary safeguards in place and it is being delivered proportionately and justly. The figures provided in the EQIA draft report suggest that this is not the case.

Specific Comments

Consultation Process:

In a letter to Superintendent Andrea McMullan on 25th March 2011, Koulla Yiasouma, Director of Include Youth, requested sight of the evidence that had been used to reach the decision that the procedure was human rights compliant and met the requirements of S75 of NI Act 1998. Include Youth also queried if a full consultation would be conducted as required by S75 and recommended that a full consultation should be carried out. We were disappointed by the response from the PSNI that a review and consultation would be carried out, but only once processes, procedures and outcomes had been fully developed and validated. The date suggested for a full review and consultation was April 2012. We note that the EQIA report was not published until 30 November 2012, 7 months later than hoped. We are still of the opinion that the time for an EQIA was 2 years ago, before the policy was operationalised. This is a retrospective EQIA. This policy should not have been rolled out on the ground until the substantial concerns raised by Include Youth and other like minded organisations had been adequately addressed.

It is deeply concerning that this policy has been operational since April 2010 without any public consultation as is required by S75 of the NI Act 1998.

We note that on page 9 of the Draft EQIA Report it states that:

"The EQIA has been undertaken at a relatively early stage in the implementation of this process and as such has limited data".

We would take issue with the interpretation that this is an early stage of the process. We would argue that there is sufficient data at this stage to reach the conclusion that there are adverse impacts. We are of the opinion that two years worth of data provides sufficient information on which to make an assessment.

We note the reason given for having limited data is that in relation to the application of Discretion, data on the majority of s75 grounds are not currently captured by the PSNI's information systems (gender, age and address are currently the only details recorded). This in turn is the reason given for why the PSNI cannot adequately comment on possible inequities within the application of Discretion, at this point. We would contend that although the data is limited, there is enough information with regards to age, gender and address to warrant concerns over the equitable application of Discretion.

Furthermore, we would ask why steps have not been taken sooner to collect the necessary s75 information. We acknowledge the intention to establish monitoring procedures by all appropriate s75 grounds, as stated in the Preliminary Recommendations of the draft report (page 23) and that this data will be used to inform a further EQIA in 2014. However, we are still confused as to why these steps were not taken sooner, in order to better inform the current EQIA. And given the PSNI have had 2 years to gather necessary data, we would question how much further on will they be with regard to the collection of appropriate data, one year down the line.

We note that a consultation was carried out on the PSNI Service Procedures in 2011 but this was a narrow consultation, only dealing with the service procedure and not the wider policy as a whole.

We do acknowledge that some improvements have been made as a result of dialogue with Include Youth and other child's rights organisations, but many of the concerns we raised from the outset of the process have still not been adequately addressed.

We would be keen to hear how the PSNI consulted directly with children and young people on this current EQIA, as stated on page 21 of the draft report. We would also like to receive feedback on what issues were raised by children and young people:

"The PSNI will review the policy in light of the feedback received and will ensure a full and complete consultation process, including direct consultation with children and young people as per the Equality Commission's Guidance, is carried out."

We would also welcome information on what attempts were made to provide children and young people and those with learning difficulties with accessible versions of the document.

Causes for Concern

Victim

Include Youth agrees that victims should be given timely and appropriate information at each stage of the criminal justice process and we also support the view that in any disposal or sentencing decisions, the experiences of the victim must be considered. However, in our previous responses we pointed out that we did not agree with a victim having direct involvement in the process or having a veto in relation to the decision making process around disposals. We therefore welcome the acceptance by the PSNI that the victim should not have the power to veto an offender from receiving a discretionary disposal.

Veto:

While it is made clear in the draft EQIA report that the victim does not have the right of veto, we are concerned that the leaflet which is given to Victims explaining the scheme, does suggest otherwise. It states that before discretion can be used:

“the victim must consent before discretion can be considered.”

We would welcome clarity on this matter.

While we welcome the recognition that the outcome must be proportionate and must take cognisance of suspect’s means to deliver the outcome we do however still have some reservations about the involvement of the victim, alongside the IO, in deciding the desired outcome, as stated in 6.2(ii) of the Operational Guidance.

“The IO must explore and agree with the victim a suitable desired outcome.”

We remain concerned about the risk of the process being led by subjective views and feelings of individual victims, leading to inconsistent application of the law in contravention of international and domestic human rights standards.

We have serious concerns over police and victim deciding on reparation.

Include Youth questions whether these types of outcomes may potentially be disproportionate to the offence committed, particularly given that other existing diversionary disposals such as informed warnings do not have such outcomes attached. Indeed some disposals on conviction may not carry such onerous conditions. In our view, police and victim cannot act as judge and jury.

Best Interests:

Include Youth remain concerned that the operationalization of ‘speedy justice’ is not fully compliant with Article 3 of the UNCRC, the child’s best interest. We acknowledge the inclusion of ‘best interest’ in Section 3.7 of the Operational Guidance on, but still believe this does not go far enough to ensure compliance. We would repeat our recommendation that the Service Procedures should be proofed for compliance with the best interest principle as required by the PSNI Policy Directive on Policing with Children and Young People².

Informed Consent:

Include Youth is concerned that even with a parent/guardian present the decision taken by a young person to consent to a diversionary disposal may not be a fully informed one. We note that the:

“PSNI will seek to improve information supporting discretion, such as the suspect information statement, in order to maximize understanding of those involved in what the process is and its consequences” (Page 22 of draft EQIA report).

In our view this is not a satisfactory response to the concerns raised regarding informed consent.

Proportionality:

In order to comment further on the proportionality of the outcomes, we would require information on what the outcomes have been to date. We would be grateful if the PSNI could provide us with this information.

Criminal record:

Include Youth remains concerned regarding the implications for young people of obtaining a criminal record for what may be very minor offences.

While we acknowledge that a discretionary disposal does not result in a criminal conviction, we are concerned that it is kept on police record for 12 – 30 months. As these can be disclosed in an enhanced criminal record check, the potential impact on a young person who has committed a low level offence can be highly significant when they are applying for certain training and employment opportunities. This issue has been brought to the fore recently in England, when Judge Lord Dyson made an appeal court ruling in Jan 2013, claiming that the way the criminal records system operated was unlawful and breached

² PSNI Policy Directive PSNI Policing with Children and Young People PD13/06 January 2010.

human rights. Dyson, one of Britain's most senior judges said that a blanket requirement on job applicants to disclose minor offences, including cautions, amounts to a breach of right to private and family life. The case was of a 21 yr old man who had warnings from when he was 11 over 2 stolen bicycles. He was asked to disclose cautions even though they were spent, when he applied to study university sports studies course. Judge Dyson claimed that these disclosures can lead to person being excluded from employment.

Accountability:

The draft EQIA report notes that:

“there are measures in place, both internally and externally, to ensure the disposal is used appropriately and this change reflects the wider changes within NI society and it’s relationship with PSNI” (page 23).

We would contend that the statistics within the EQIA report, as well as those obtained from an FOI³ submitted by Detail TV, suggest that disposals are not being used appropriately, on a number of different levels, including age and geography.

The FOI statistics revealed that **around 10% of all disposals being issued are to under 17’s and the most common age for a disposal is 18**. Include Youth highlighted from the outset that this procedure would predominantly impact on young men – and the statistics show that to be the case.

The statistics also highlight the inequitable nature of delivery of discretionary disposals across different geographical areas. For example when calculated per head of the population between South and East, compared to North and West Belfast, the policy has been used almost three and a half times more in parts of South and East Belfast.

This clearly highlights the arbitrary nature of this operation. Questions need to be asked on why you are less likely to receive a Discretionary Disposal if you live in North and West than South and East. We need to guard against this operation becoming one characterised by postcode justice. We would ask the PSNI to consider these figures further and examine how discretionary disposals are currently being applied. Include Youth has already made it clear that in our view the principle of speedy justice cannot simply be lifted from England and rolled out in NI without taking account of our specific context, and in particular our political history and how that has impacted on policing in NI.

³ F-2012-03948, Discretionary Justice

The operationalisation of Speedy Justice must be tailored to the specific context of NI. Additional safeguards need to be set in place to take account of the different context.

We know from the evidence that exists that police behave differently in different areas and this in turn impacts on how policies are operationalised. We also know that young people have a difficult relationship with the PSNI. This is backed up not just from the experiences of the young people that Include Youth works with but also from Policing Board reports⁴, the Youth Justice Review Team report⁵.

“too many officers are still adopting a judgemental and prejudicial and even antagonistic attitude towards some young people they encounter.” (Youth Justice Review Report: 24)

Include Youth is not satisfied with the accountability measures noted in the draft EQIA report (page 22). We do not regard the agreement of offender, the involvement of police supervisors authority, the documentation of process and quality assurance process led by the PPS, to be sufficient mechanisms to ensure that disposals outcomes are used appropriately and consistently.

The need for proper checks and balances around the use of discretionary disposals remains a significant challenge. Proper and robust independent oversight mechanisms must be in place.

Concluding Comments

As we have said before, we do support the introduction of discretionary disposals, in principle. We welcome the PSNIs commitment to supporting approaches which are designed to keep young people out of the formal justice system. However, rather than allaying our initial concerns, the data contained within this EQIA along with the response to the FOI request, provided to Detail TV, has only served to cement our concerns around the operationalisation of ‘speedy justice’. The data confirms our initial fears about the operation of ‘speedy justice’ and demonstrates that it is currently being applied in an arbitrary and inconsistent manner and as such is not delivering transparent, child rights compliant, accountable justice.

We acknowledge the PSNIs willingness to seek out the views of Include Youth on this issue and we look forward to engaging on continued dialogue on the matter.

⁴ NI Policing Board 2011, Thematic Enquiry Children and Young People.

⁵ Youth Justice Review Team, 2011, A Review of the Youth Justice System in NI, DOJ.