

include YOUTH

**Response to the Department of Justice consultation on proposals for the use
of live links in weekend courts**

31st May 2013

“Totally against it because it because it’s not personal, it doesn’t feel real.”

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Introduction

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 in the areas of youth justice and education, employment and training of young people. Include Youth works directly with young people to support them to be engaged with policy decision making processes through our Young Voices project and to improve their employability through our Give and Take Scheme. We produce resources and provide training, information and support to practitioners and organisations.

General Comments

Include Youth welcome the opportunity to comment on the proposal to use live links in weekend courts.

We have responded to several consultations on the use of live links over the past year. We responded to the correspondence¹ of 12th January 2012 on the proposal to provide Live Link facilities between Lakewood Regional Secure Care Centre and the Youth Court. We submitted written evidence on this issue on 24th February² and again on DoJ's proposal to extend the use of live links in courts on 10th September³ 2012.

As we stated in our previous responses the use of live links raises issues of informed consent to participate and it never should occur where there is a risk of prejudicing young person's access to justice and fair trial.

An efficient youth justice system is in the best interests of children and young people; however, administrative ease or financial expediency must never take precedence over the rights of these often vulnerable children and young people.

¹ Letter from Tom Haire, Criminal Law Branch to Koulla Yiasouma, Include Youth, 12th January 2012.

² Include Youth response to DoJ/DHSSPS consultation on use of live links at Lakewood Regional Secure Care Centre, February 2012.

³ Include Youth response to DoJ consultation on proposals to extend the use of live links in courts, September 2012.

In our responses of February 2012 and September 2012, Include Youth recommended that there should be a review of the use of Live Links, monitoring progress and outcomes in cases which are proceeded using video link, to help identify whether there is any adverse impact. We further stated that this review should involve full consultation with young people.

We further recommended that this review should be carried out in advance of any proposals being drawn up to extend the use of Live Link.

We are therefore disappointed that a further proposal to extend the use of live links has been made without a review having been undertaken on its use, identifying potential problems and suggestions for improvement.

Specific Comments

Equality Considerations

While we support the need to deal with delay within the system and welcome the Department's intention that the proposal will not change the defendant's right to be present at a hearing, or to consult privately with the legal representative, we are concerned about the Department's assessment that an equality impact assessment is not required.

The document acknowledges that the proposed change is most likely to impact on young men who offend, but the screening form does not supply adequate information or sufficient detail on the grounds on which the decision not to conduct an equality impact assessment were made.

The fact that the proposal impacts on a relatively small number of people and that it has been part of proceedings for a length of time, does not, we believe, provide adequate reasons to proceed without a full EQIA:

“the use of live links is already an established part of court procedure for criminal proceedings and has been for some considerable time. ...The proposals impact in quite discrete areas of court business and on a relatively small number of people within the justice system”⁴

Furthermore, we would call into question the Department's assessment that live links:

⁴ DOJ Section 75, Equality Screening Form on Live Links in Weekend Courts, page 19.

“have found to be a safe and effective way for the criminal justice process to operate. Live links have proved to be an acceptable and legally sustainable approach to court appearance.”⁵

We are concerned about the level of evidence on which it was decided to screen out the proposal for a full EQIA. The DoJ have stated in the screening form that:

“Live links are already in extensive use and have been working well for both young people and adults.”⁶

No evidence is cited to support this statement.

In the September 2012 DoJ consultation on the extension of live links, just one piece of evidence was cited as having informed the decision to screen out the policy for an EQIA, the 2008 NIO Evaluation of the Woodlands Juvenile Justice Centre Youth Court Video Link⁷. As we stated in our response, we do not regard this to be a sufficient body of evidence on which to base a decision.

The NIO report summarises that there was no evidence to suggest that using video link in any way disadvantaged a young person. They did however, make the qualification that the young defendant must be able to see and hear the court proceedings clearly at all times. While observations of proceedings highlighted that most of the hearings via video link occurred with no difficulty and were well and efficiently organised, the report did state that “there were on occasions technical problems when sound and picture quality were not of the highest standard” and that although “the majority of the young defendants were well behaved ... they did appear to be a bit confused at times when they were unable to hear their solicitor or other court personnel.”⁸

Young People’s Participation and Level of Understanding

There is evidence to suggest that young people have difficulty in understanding court processes, the bail process in general and in particular, bail conditions which may be imposed upon them⁹. The NI Law Commission in their review of the law on bail in

⁵ Ibid, page 19.

⁶ Ibid, page 20

⁷ NIO, Evaluation of the Woodlands Juvenile Justice Centre Youth Court Video Link, Research and Statistical Series, Report No. 19, Independent Research Solutions, June 2008, page 19

⁸ Ibid, page 22.

⁹ Include Youth submission to Youth Justice Review team’s review of the Youth Justice System in NI, December 2011, page 31.

criminal proceedings stated that some young people find it difficult to participate fully in bail proceedings and feel they have no voice¹⁰.

There is an obligation under Article 12 of the UNCRC, which includes the child's right to be heard and to fully participate in judicial and administrative proceedings affecting him or her. Understanding and participating in proceedings are essential to a fair hearing under Article 6 of the European Convention on Human Rights.

We are concerned that if children and young people find court proceedings difficult to follow in general, that the use of live links, could potentially exacerbate that problem even further.

Young People's Views

In preparation for our response to the September 2012 consultation, we conducted consultations with young people in both the Juvenile Justice Centre and Hydebank Young Offenders Centre to ascertain their views and experiences of Live Links. The consultations were carried out in February 2012.

Our consultation with young people suggested that, four years on from this evaluation, there remained significant problems with technical difficulties. The following quotes were submitted as part of our response to the consultation in September 2012, but given the lack of evidence from young people provided within the screening form for the current consultation and the failure to address our previously raised concerns, we thought it was worthwhile repeating what the young people had to say in February last year.

Young People's Views on Live Link (February 2012)

Technical Problems

"You can't hear properly in video link."

"It all crackles and you can't hear what's going on."

"In the Belfast court, you can't hear the judge talking, if other people in the court are talking."

¹⁰ NI Law Commission, Consultation on EQIA Reform of Bail Law and Practice, 2011, page 14.

“Sometimes it can’t even connect.”

“I didn’t hear what was being said because the video link wasn’t working properly.”

“Sometimes, you can’t even get through, the link doesn’t work, and you have to wait for the court to ring you and tell you what’s happened just, what’s been said in court.”

“I went to video link once and I just sat waiting, then got a call to say I hadn’t got bail, but because it didn’t connect I didn’t hear what was said because the video link wasn’t working right.”

“You can’t hear what people are saying.”

Removed from proceedings – less chance to have a say.

“In video link it’s like you’re not there, not in court.”

“It doesn’t feel like you are in court when you use video link.”

“It’s just harder to get say with video link.”

“It’s hard to get your say in court anyway, but video link is even worse.”

“You have to shout out to be heard.”

“In video link you don’t get to say nothing – because the judge doesn’t look at you and talk to you, they talk to your solicitor just.”

“Sometimes they (solicitors) ring you just in video link, to tell you what’s happening. Usually they tell you what’s going on, but you’d rather be there so they can tell you direct and you can ask what’s going on.”

“Sometimes on video link the judge talks to the others in the court, about you, but not to you.”

“When I’m in court I make sure I get my say, but in video link you don’t know how, because you don’t know if they are looking at you or not.”

“They talk as if you are not there on video link, as if you’re not listening.”

The positives of going to court

“If you can get out to court people can give you stuff .”

“You can get out and see people if you go to court – your family.”

“You can get out and have a smoke.”

“You get out of custody for a while, that good.”

Questions about process

“But who decides – is it the judge or the solicitor? It should be you who gets to decide whether you want to use video link or not.”

“Once there was two people here in the video link and they thought it had been turned off, but the court could hear them talking – staff and a young person – they nearly got done for contempt of court.”

Reasons why you might want to use video link instead of being in court.

“The only reason I don’t like going to court is because you are waiting in the cells for ages – all day sometimes – especially in Belfast court.”

“Because you don’t have to wait in the cells – it can take ages before they bring you down to the court and your heads melted.”

“And you can get stuck in a cell with a nutter – it can be adults or anyone. “

*“I’ve been taken out of custody to court a few times, waited there for ages, then told there’s no need for me to be there, they can f*** it all up sometimes, the courts, make mistakes and drag you up there for no reason.”*

“Video link is handy, you don’t have to leave custody/ secure.”

“I hate court. See everybody talking about you and especiialy when the judge tries to make an eejit out of you.”

“There’s no reason for not wanting to use video link I don’t think.”

The use of video link depends on circumstances

“It depends what you are in court for, like if I was up for bail, I’d want to get my day – because the cops always say lies about me, so I want to be able to have my say. But if it’s just something stupid you’re in court for, like you know what’s going to happen, when you just stand and they say something to you, then you sit down and that’s it, I’d rather use Video Link.”

“Sometimes video link is better, sometimes it’s not – it just depends what you’re up for, why you have to go to court.”

To inform our response to the current consultation we returned to the Juvenile Justice Centre in May and asked four young people about their recent experiences of using live links. Three of the young people had used it on at least one occasion.

Young People’s Views on Live Link (May 2013)

Were you made aware of options to use it or not?

“No”

“I was told to use video link.”

“the staff wanted me to use video link.”

Do you feel you were able to take part fully?

“You don’t know what’s happening.”

“No one lets you know what to do.”

“You can’t hear what’s happening.”

“You can hear the judge but no-one else.”

“I would prefer face to face.”

Engagement with solicitor

“No, it’s a lot different speaking face to face than video link, you can’t understand what they (solicitor) are saying.”

“I feel there should always be face to face consultation with solicitors than over video link.”

“I always get a chance to talk to my solicitor.”

For or against using live links?

“For – I get nervous going to court.”

“I’d rather go to court to hear what they are saying.”

“I couldn’t care less, it’s all the same outcome.”

“Totally against it because it not personal, it doesn’t feel real.”

These more recent conversations with young people suggest that the majority of the issues we raised as being problematic with the use of live links remain unaddressed.

- Young people do not appear to be fully aware of the available options when it comes to using live links
- Young people using live links can feel removed from the process
- Technical problems still appear to be an issue and some young people cannot accurately hear proceedings
- The quality of the engagement with solicitors appears to be called in to question

All of the above suggests there is a risk of prejudicing young person’s access to justice and fair trial.

Conclusions

Include Youth appreciates that in particular contexts the use of live links can be both cost effective and expedient. While we acknowledge that the use of live links could address delay within the system, we remain concerned that young people appear to still experience technical problems in its use and can feel removed from the process. These issues must be addressed as part of the preparation for the extension of the use of live link at weekend courts. The quotes from the young people would suggest that a further review of the use of Live Links is required before proposals are brought forward to extend its use.

We look forward to working with the Department of Justice on this matter and in particular on any steps they may take to review the experiences of young people’s use of live links.