

include YOUTH

**Include Youth response to Public Prosecution Service
consultation on Guidelines for the Prosecution of Young
Offenders**

July 2019

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 and/or alcohol, engaging in unsafe or harmful sexual behaviour, or at risk of being harmed themselves. We provide a range of tailored employability programmes for these young people, including programmes in partnership with community based organisations.

Our Give & Take Scheme adopts a youth work approach to improving the employability and increasing the self-esteem and confidence of young people aged 16 to 24 who are not yet ready to participate in mainstream training.

Many of these young people have experienced social exclusion, poverty or have other complex challenges in their lives and therefore need additional support to overcome these barriers and positively progress their education, training or employment needs. Seventy-five per cent of young people on the Scheme are care experienced, while over a third have a background in offending. We offer a range of tailored programmes including

- Core - for young people referred to us through the Health Trusts
- Strive - a collaborative partnership programme with Youth Initiatives, Newstart Education Centre, NI Alternatives and Lifford Clonleigh Resource Centre.
- Outreach - for groups or organisations throughout Northern Ireland
- One to One - for young people at risk of child sexual exploitation
- Transitional support - for those moving on from our Scheme and into mainstream education, training or employment
- Meant to Work – a one to one mentoring service for young people in Greater Belfast

Our main offices are in Belfast, Armagh, Ballymena, Derry, Enniskillen, Newtownards, Omagh and Lifford.

Include Youth also delivers an Employability Service on behalf of two of the five 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 also engages in policy advocacy work in the areas of employability, youth justice and policing. This 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.

Include Youth has worked for 40 years with and on behalf of children and young people who are the most vulnerable and at risk. We have a strong track record of policy advocacy in promoting the rights of children in the criminal justice system. Our policy work is grounded in and informed by the voices and experiences of children in the system and the practitioners who work with them, and by relevant research in the context of international human rights standards and obligations. In 2008 Include Youth produced a Manifesto for Youth Justice in Northern Ireland, and accompanying Background Paper¹. We also submitted an extensive response to the Review of Youth Justice in 2011 and have continued to call for the full implementation of the 31 recommendations of the youth justice review over the last 8 years. In its second, most recent and final report monitoring progress on implementation of the Youth Justice Review's recommendations published in December 2015, CJINI stated that 59% of the accepted recommendations of the Youth Justice Review had been achieved and that 41% had not been achieved. They noted that this fell short of the Ministerial target to achieve 90% of recommendations by 2014.²

We have been engaged in a number of relevant consultations over the years including the reducing offending strategy, the review of custodial arrangements for children and the consultation on bail. We remain engaged with the outworking of DoJ's Scoping Study, although we were disappointed that no formal consultation took place in relation to the scoping study and no final report was produced on its findings and recommendations. We also are engaged with the DoJ/DoH plans for the review of regional facilities for children and are represented on the Stakeholder Advisory group.

We welcome the opportunity to respond to this consultation document. Our response has been informed by international children and human rights standards, evidence based practice and the views of young people.

Profile of young people

Recognising that children and young people come into conflict with the law for a range of complex reasons must be at the heart of the PPS Guidelines and the overarching principles embedded in the guidelines cannot be effective if there is not an understanding of the broader context of young people's lives . Local and international research consistently demonstrates that children and young people are

¹ Haydon, D. (2008) *Developing a Manifesto for Youth Justice in Northern Ireland: Background Paper*, Include Youth

² 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' Criminal Justice Inspector Northern Ireland, December 2015, p.63.

more likely to be involved in offending behaviour if they have experienced living in poverty, truancy or exclusion from school, limited educational attainment, neglect or abuse within their families, placement in residential care, drug or alcohol misuse, physical and mental ill-health and experience of paramilitary intimidation. In Northern Ireland there is the additional dynamic of the legacy of the conflict and the persistence of formal and informal punishments within a society deeply divided by sectarianism. These significant and inter-connected issues require a whole-child approach from the PPS.

International children and human rights standards

It is vital that any policy or practice relating to young people in the criminal justice system is guided by and founded in international children and human rights standards including the European Convention on Human Rights and the United Nations Convention on the Rights of the Child (UNCRC). We welcome the reference to the UNCRC within the draft Guidelines and in particular the reference to Article 3(1) on the best interests principle. We would welcome reference to other relevant international standards including the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),³ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁴ and the United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty.⁵ It would also be beneficial to refer to the Concluding Observations of the Committee on the Rights of the Child from the fifth periodic examination of the UK as well as the General Comment No10 on children's rights in youth justice and General Comment No12 on the right of the child to be heard.

With reference to its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee recommends the State party to bring its juvenile justice system, including in all devolved administrations, the overseas territories and the Crown dependencies, fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:

(a) Raise the minimum age of criminal responsibility in accordance with acceptable international standards;

(b) Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children's criminal records;

(c) Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18;

³ Adopted by General Assembly Resolution 45/112 of 1990.

⁴ Adopted by General Assembly Resolution 40/33 of the 29th November 1985.

⁵ Adopted by General Assembly Resolution 45/113 of the 14th December 1990.

(d) Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children;

(e) Ensure that child detainees are separated from adults in all detention settings;

(f) Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.⁶

Article 40 of the UNCRC addresses rights in relation to children in conflict with the law and sets out a number of minimum rights that should be afforded to every child under 18 years old who has been alleged as, accused of or recognised as, having infringed the penal law.

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.⁷

Furthermore, the PPS would benefit from referring to the Council of Europe's Guidelines on Child Friendly Justice. The Council of Europe guidelines on child-friendly justice were created by a group of specialists after an extensive consultation with almost 3800 children throughout Europe. The final result is a set of guidelines that are intended to enhance children's access to and their treatment

⁶ CRC/GBR/CO/5 paragraph 79

⁷ <https://www.cypcs.org.uk/rights/uncrcarticles/article-40>

in justice. These guidelines set out basic rules for European states to follow when adapting their justice systems to the specific needs of children. They apply to all circumstances in which children are likely, on any ground and in any capacity, to be in contact with the criminal, civil or administrative justice system. The Guidelines on Child Friendly Justice define child-friendly justice as:

*“child-friendly justice” refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.*⁸

Participation of Children and Young People

International Standards on Participation

The UNCRC General Comment No 12 states: *“the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention”*.⁹ As one of the four general principles of the Convention this article not only establishes a right in itself but should be considered in the interpretation and implementation of all other rights in the Convention.

General Comment No 12 on the right of the child to be heard provides the most comprehensive elucidation of how Article 12 should be applied and interpreted in all contexts of children’s lives, including juvenile justice. It observes that the child’s right to be heard must be respected during all stages of the judicial process *“from the pre-trial stage, when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and disposition, as well as implementation of the imposed measures”*.¹⁰

Other applications of Article 12 with regard to juvenile justice detailed in General Comment No 12 include the use of diversion when a child must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other advice and assistance, prompt and direct information regarding any

⁸ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

⁹ UN Committee on the Rights of the Child (2009) *General Comment No 12 on the Right of the Child to be Heard*, UN Committee on the Rights of the Child

¹⁰ Ibid paragraph 58

charges, child friendly surroundings and proceedings and protection of the privacy of children and young people within proceedings.¹¹

The UN Committee General Comment No 10 on Children's Rights in Juvenile Justice underlined the application of Article 12 within the context of juvenile justice, asserting that "*the right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice*".¹²

In addition, participation is one of the key basic principles in the Council of Europe Child-Friendly Justice Guidelines and also contained within the Beijing Rules.

Significantly General Comment No 10 also draws attention to the UN Committee on the Rights of the Child's view that "*the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights*".

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) state in paragraphs 3, 37 and 50 that "*young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control...youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs...young persons themselves should be involved in the formulation, development and implementation (of plans and programmes)*".

Listening to the views of children and young people in developing law, policy and practice

Meaningful participation involves informing children and young people of their rights, addressing issues of concern to them, publicly acknowledging their views and contributions and providing feedback about the impact of their suggestions on the development of policies and practice.

The outworking of Article 12 of the UNCRC and Section 75 of the Northern Ireland Act, 1998, is central to the work of Include Youth.

We firmly believe that children have the right to be meaningfully involved in decisions that affect their lives. Article 12 in conjunction with Article 3 of the UNCRC mean that children must be enabled to express their views and decision-makers taking proper account of those views is a necessary component of making a decision in the best interests of the child. This is of crucial importance in regards to a child's right to

¹¹ Ibid paragraphs 59-61

¹² UN Committee on the Rights of the Child (2007) General Comment No 10 on Children's Rights in Juvenile Justice, United Nations Committee on the Rights of the Child

participation in all aspects of the criminal justice system, particularly judicial proceedings.

Information provision

The structures and processes within the criminal justice system are complex and challenging particularly for children and young people. Frightening, disorientating and difficult to understand is how children often record their experiences of the criminal justice system. Arrest, adjudication, disposal, through to resettlement - each delivered by agencies with their own layers of bureaucracy, systems, services, language, professionals - result in young people being confused and isolated from the process.

Information should be provided in a form accessible to children and young people, appropriate to their age. This is particularly relevant given the high number of young people with special educational needs, communication difficulties and low levels of literacy coming into contact with the criminal justice system. Knowledge at all stages of the process from pre-arrest through to post-disposal is essential if children and young people are to be active participants in the processes which will dramatically impact on their lives.

Participation of young people in the consultation and drafting of the PPS guidelines

Statutory equality obligations under Section 75 place an obligation on designated public authorities to carry out consultation with children and young people and to remove any obstacles to meaningful consultation that may exist. It is clear that the PPS Guidelines will have an impact on children and young people. The Equality Commission advises that consultation with affected groups should take place at the earliest stage possible, so that they can influence the direction of travel from the outset. It is crucial that the PPS consult with children and young people in the development of the Guidelines and it would be particularly advantageous to consult with those young people who may be more likely to come into contact with the justice system or those who have already experienced contact with the justice system. We would also recommend that the PPS refer to the Equality Commission's guidance "Let's Talk Let's Listen".¹³

Despite Include Youth's request from the beginning of the consultation process for the PPS to provide a child and youth friendly version of the consultation document, no such version, at the time of submitting this response, has been provided by the PPS. It is very disappointing that the PPS did not have a youth friendly version of the consultation document available from the outset but even more frustrating that no

¹³ *Let's Talk, Let's Listen: Guidance for public authorities on consulting and involving children and young people*, Equality Commission for Northern Ireland, May 2008.

such document has been made publicly available at this late stage of the consultation process.

We would like to receive details on how the PPS has attempted to ensure that young people's views have been heard and taken into account in the development of these guidelines. We would also like to receive the child and youth friendly version of the document.

Best Interests

Include Youth believes that one of the greatest challenges any youth justice system has is to effectively implement the best interests principle throughout its work. The best interests of the child should be the paramount consideration in all decisions affecting children in the policy, practice and the administration of justice and policing consistent with the UNCRC and other relevant international child rights and human rights standards.

We welcome the commitment within the Guidelines to the best interests principle and the reference to the aims of the youth justice system which includes to "have the best interests of children as a primary consideration" as outlined in the Justice Act (NI) 2015. Include Youth welcomed this amendment to the Justice (NI) Act 2002 which enshrines Article 3 of the UNCRC into domestic law and commend the PPS for making their commitment clear to incorporate its obligations under the revised statutory aims of the youth justice system into its working practice.

With regard to best interests of the child in it's most recent examination of the UK governments compliance with the UNCRC, the UN Committee on the Rights of the Rights stated that:

*"the right of the child to have his or her best interests taken as a primary consideration is still not reflected in all legislative and policy matters and judicial decisions affecting children, especially in the area of alternative care, child welfare, immigration, asylum and refugee status, criminal justice and in the armed forces."*¹⁴

We would recommend that the PPS examine further with all staff what considering the best interests of the child actually means in practice. The PPS could be guided in this by looking at some of the international standards already referred to, such as the Council of Europe Guidelines on Child Friendly Justice. We would welcome the collection of information and monitoring data by the PPS which would demonstrate that they are upholding the best interests principle in all aspects of their policy and practice.

¹⁴ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland,

Delay

International standards on delay

International children's rights standards have much to say on the issue of delay. UNCRC General Comment Number 10 states:

“for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized”.

Article 40 (2) of the UNCRC requires *“to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.”*

The Beijing Rules refer to the need for juvenile cases to be dealt with in a speedy manner as being of *paramount concern*.

The impact of delays cannot be underestimated, particularly for young people. The Criminal Justice Inspection Northern Ireland's (CJINI) reports have acknowledged that young people are more negatively affected by delay and have called again for priority to be placed on reducing delays for young people.

Recommendations 14 and 15 of the Youth Justice Review called for a reduction in delay in youth cases and for the introduction of statutory time limits for all youth cases. The Youth Justice Review placed a great deal of emphasis on the need to tackle delay within the youth justice system, stating that the issue of delay stands out above all others as being in urgent need of reform.¹⁵ The review team referred to the level of delay with the youth justice system as “unconscionable”. The Review recommended that end-to-end STLs covering the period from arrest to disposal be introduced and should be no longer than 120 days. The Review also stated that it was aware that provisions already existed in the Criminal Justice (Northern Ireland) Order 2003 for the introduction of STLs, but that it did not regard them as adequate, as they do not make provision for STLs on an end-to-end basis.¹⁶

The DoJ consulted in December 2013 on introducing time limits based on the existing provision set out in the Criminal Justice (Northern Ireland) Order 2003.¹⁷ In December 2013, CJINI were highly critical of the approach taken by DoJ on STLs

¹⁵ 'A Review of the Youth Justice System in Northern Ireland' September 2011, p.68.

¹⁶ *Ibid*, p.71 - 73.

¹⁷ 'Time Limits in the Youth Court – A Department of Justice Consultation' Department of Justice, December 2013, para.2.48.

stating that this would mean that such STLs would not be end-to-end as envisaged by the Youth Justice Review.¹⁸

Following on from this consultation, DoJ officials indicated at the Committee for Justice that they planned to introduce STLs in the youth courts within this current assembly mandate by starting with a scheme broadly similar to that which had already been proposed by the Department, supplemented with an administrative time limit for the earlier stages of the process.¹⁹ Officials indicated that they intended to scope out the idea of an earlier start point, to be taken forward in the next mandate, as this would require additional legislation.²⁰ In March 2015, DoJ officials indicated to the Committee for Justice that they intended introducing the initial scheme through regulations by the autumn of 2015.²¹

Subsequently, the DoJ have not met their targets with regard to the timing of consultation on an administrative time limit and on statutory provision for an earlier start point. Regulations for the initial STL scheme have not been brought forwards. In its most recent inspection monitoring progress on implementation of the Youth Justice Review's recommendations published in December 2015, CJINI has stated that the recommendation of the Youth Justice Review that STLs be introduced has not been achieved.²²

Include Youth are extremely concerned by the fact that over 8 years on from the publication of the Youth Justice Review's recommendation, an end-to-end STL of 120 days has not been delivered. Despite attempts to address the issue of delay there has still not been sufficient progress.

We remain concerned that recent data²³ indicates that young people consistently wait longer than adults for their cases to be dealt with in Magistrates' courts. The data also reveals that although the median time for charge cases has fallen there has been a 55% rise in time taken for summons cases.

We note that in paragraph 3:1:1 of the Guidelines it states that in relation to a decision to prosecute, *'any decision should be taken as expeditiously as possible'*. We are concerned that the term 'expeditiously' is too vague and does not allow for a

¹⁸ 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' Criminal Justice Inspection Northern Ireland, December 2013, p. 32.

¹⁹ 'Statutory time limits in the Youth Court: Department of Justice' 24th September 2014, Committee for Justice, Official Report (Hansard), p.3.

²⁰ *Ibid*, p.2.

²¹ 'Statutory time limits: Department of Justice' 25th March 2015, Committee for Justice, Official Report (Hansard), p.2.

²² 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' Criminal Justice Inspector Northern Ireland, December 2015, p.42.

²³ <https://www.justice-ni.gov.uk/publications/r-s-bulletin-28-2018-case-processing-time-criminal-cases-dealt-courts-northern-ireland->

more rigorous approach to the issue of delay. We would suggest that the PPS consider the implementation of internal administrative time limits for each stage of the prosecution of young people and that evidence is collected over a period of time to ensure that these time limits are being met.

Custody as a last resort

We would welcome reference within the Guidelines to Article 37 of the UNCRC. Article 37 of the UNCRC contains a number of principles in relation to the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment and conditions for children deprived of their liberty. Article 37b and other international standards affirm the placement of a young person in an institution should always be a disposition of last resort and for the minimum necessary period.²⁴ The UN Committee on the Rights of the Child have made numerous calls for the UK government to use detention only as a matter of last resort and for the shortest appropriate period of time and to ensure that detention is not used discriminatorily against certain groups of children.

Custody is an expensive resource with high level of re-offending for young people and must be used sparingly. It is apparent that in NI custody is not used as a last resort particularly for young people who are remanded. Recent statistics reveal that in 2017/2018 71% of young people in custody in Woodlands Juvenile Justice Centre were on remand.²⁵

The Youth Justice Review also called for changes with regard to the use of custody for children and young people. The Review team stated in relation to international standards and the operation of bail and remand proceedings for children and young people:

“In line with these standards we reinforce the principle that remand in custody should only be used as a last resort and specifically not in those cases where, if found guilty, the young person cannot be committed to custody.”²⁶

We would welcome reference within the Guidance to the principle of custody as a last resort, outlining the PPS position on the principle and its approach to bail.

²⁴ Office of the High Commissioner for Human Rights (1085) UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) Rule 19.1, see also the Council of Europe (2010) Guidelines on Child Friendly Justice; Council of Europe para 23. , see also Office of the High Commissioner for Human Rights (1990) United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) Guideline 46;

²⁵ Youth Justice Agency, Annual Workload Statistics 2017/2018

²⁶ Department of Justice, A Review of the Youth Justice System in Northern Ireland, 2011, para3.6

Key considerations in the decision to prosecute

We welcome the commitment in paragraph 3.2.4 to pay regard to '*all known relevant facts and circumstances of the young person's environment, age/maturity, educational attainment, family circumstance*'. It is essential that Prosecutors are able to access relevant information with regard to the background and personal details of each young person on which they make decisions. Include Youth believe that it is vital that those making decisions have detailed information from relevant professionals and others working with the young person. An assessment should be made of the young person's situation which would involve input from relevant professionals and give the Prosecutor a basis on which to make an informed decision. We note that the Guidance refers in paragraph 3.2.5 to the fact that taking into account the best interests of the child principle '*may*' also involve an analysis of a cluster of background information on the child provided by carers, YJA, PSNI, education bodies and social services. We believe that the word '*may*' is too weak and should be replaced by '*must*'. We believe that Prosecutors should have an obligation placed on them to actively seek out relevant information from as wide a range of bodies as necessary, including from any voluntary and community sector organisations that the child or young person has had contact with.

Coupled with the need to gather background information on the child we believe that Prosecutors would benefit from children's rights training and in particular training to raise awareness on the complex challenges that many of the children they come into contact with face on a daily basis and what impact a disposal can have on their lives.

Understanding the prosecution decision

We note in paragraph 3.3.1 that the Guidance states that information should be provided in such a way that the decision outcome is easily understood. We welcome this commitment to provide information in an accessible format as we are aware that many children, young people and families find it difficult to understand the reasons for the decision. We would recommend that the PPS do some follow up work to ensure that this aim is being met.

Diversion

International standards on diversion

The UNCRC prioritises alternatives to judicial proceedings for under 18s '*wherever appropriate and desirable*', while including a caveat that human rights and legal safeguards be fully respected.²⁷

²⁷ UN Convention on the Rights of the Child paragraph 40.3 (b)

The UN General Comment No 10 on Juvenile Justice notes that in light of this provision, and given the fact that the majority of children and young people commit minor offences:

“a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases”.²⁸

This UN General Comment outlines a series of safeguards which should apply to the use of such diversionary measures. These include the existence of compelling evidence regarding the child’s involvement in the alleged offence, free and voluntary consent given by the young person, clear identification in law as to which cases diversion can be used for, regulation of the discretionary powers of police and others in this regard, access to legal advice by the young person and no criminal record resulting from the use of diversionary measures.²⁹

Other UN guidance including the Beijing Rules and the Tokyo Rules also emphasize the benefits of using diversionary measures with young people and recommend that consideration should be given to such measures where possible. The Beijing Rules draw attention to the importance of ‘informed consent’ by the young person³⁰ and opportunities to challenge this consent, noting that it may sometimes “be given out of sheer desperation on the part of the juvenile”.³¹

Include Youth’s position on diversion

Include Youth defines ‘diversion from the formal criminal justice system’ as being diversion from all engagement with statutory criminal justice agencies, and processes prior to having been convicted for committing a criminal offence.

Diversion should be the cornerstone of an effective youth justice system. International standards are supported by a body of international research that outcomes for children who have begun to get into trouble are significantly improved when they are diverted from the formal criminal justice system. It is essential to address the structural inequalities which pervade the lives of marginalised young people, families and communities, and to provide necessary support services in a non-stigmatising way enabling young people to reach their full potential and their families to be able to cope with the challenges facing them.

A longitudinal study which tracked 4,000 children found that targeted early intervention strategies actually widened the net in terms of criminalising young

²⁸ UN Committee on the Rights of the Child (2007) General Comment No 10 on Children’s Rights in Juvenile Justice, United Nations Committee on the Rights of the Child paragraphs 24 -27.

²⁹ Ibid paragraph 27

³⁰ Office of the High Commissioner for Human Rights (1085) *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) Rule 4. See also the Council of Europe (2010) *Guidelines on Child Friendly Justice* : Council of Europe, paragraph 23 Commentary on Rule 11. 3

³¹ Ibid

people. The systems appeared to damage young people and inhibit their capacity to change.³²

As McAra and McVie state, *“The key to reducing youth offending lies in maximum diversion and minimum intervention. Accepting that, in some cases, doing less is better than doing more requires both courage and vision on the part of policy makers. A realisation of this vision in turn requires acceptance that youth justice agencies cannot, by themselves, make the public feel safer nor can they mend broken families and remake shattered communities. To the extent that systems appear to damage young people and inhibit their capacity to change, then they do not, and never will, deliver justice.”*³³

Include Youth welcome that there does appear to be a commitment to alternatives to prosecution for children and young people within the wider justice system. The Youth Justice Review highlighted the importance of diversion and stressed the importance of restorative approaches. What remains under-developed is a clear emphasis on diversion *away from* the formal criminal justice system. From experience, Include Youth considers that some of the current processes within the formal system are not diversionary as envisaged by the Youth Justice Review, and raise issues regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance.

The youth justice review stated:

‘The aims of the Youth Justice System should reflect the principle of proportionality and include a presumption that low level offending should be dealt with by parents (with support where necessary), school and communities or through a police disposal. This will require:

- a. the introduction of triage (or similar) at the point of arrest;*
- b. building on the successful practices of community based restorative justice schemes;*
- c. the extension of police discretion while ensuring adequate safeguards;*
- d. greater use of police warnings and cautions for offences that would otherwise have been dealt with through more formal channels.’*³⁴

Include Youth would like to see a clear commitment to diversion away from and out of the justice system within the Guidelines. We are also concerned that some diversionary measures can only be accessed through the admission of guilt and the informed consent of the child. This is particularly worrying given the fact that many of the young people we work with appear to find the various options under diversionary

³² McAra, L and McVie, S (2010) Youth Crime and Justice Key Messages from the Edinburgh Study of Youth Transitions and Crime, *Criminology and Criminal Justice* 10(2):179-209

³³ McAra, L. And McVie, S. (2007) ‘Youth Justice? The Impact of Agency Contact on Desistance from Offending’, *European Journal of Criminology* 4(3):315-45

³⁴ Youth Justice Review, 2011, Page 114

disposals very confusing. There are so many diversionary options available that young people are often unclear about what is being offered to them. It is critical that young people do not agree to a diversionary disposal without being fully aware of the impact this decision may have, especially with regard to the possible impact on their criminal record.

We remain concerned about the impact of needing to make an admission of guilt to access the diversionary process. We would question the level of involvement the young person has in this process and the extent to which they feel in control of that decision. It is paramount that the young person understands what the implications are when they admit guilt and how this can impact on their future choices. Informed consent is vital to ensure the child's right to a fair trial. Given the profile of young people in the justice system we are also concerned about the capacity of some young people to give informed consent.

Within the Include Youth team, concerns have been raised regarding informed consent and meaningful participation by both young people and practitioners with whom they work, particularly concerning diversionary youth conferences. It is questionable whether many young people are in a position to give informed consent and have the capacity to participate, often agreeing to actions and conditions which they do not fully understand. A number of Include Youth practitioners have also expressed the view that some young people are not at the stage of being able to participate meaningfully in proceedings due to mental health issues and learning difficulties. Many of the young people involved with Include Youth who have attended youth conferences report negative experiences.

We would welcome a commitment within the Guidance to ensure that the PPS do everything they can to enable young people to fully understand the possible impact of a diversionary disposal and to take steps to provide information in a more easily accessible format.

Youth Engagement

With regard to youth engagement clinics, the issue of securing independent legal representation for young people engaged in the process remains an overriding area of concern. Appropriate legal representation should be made available to young people both in cases where they have not admitted their guilt and in cases where they have admitted guilt. Include Youth is extremely concerned that disposals such as restorative cautions, informed warnings and diversionary youth conferences are being offered at the Youth Engagement Clinics and are being accepted by the children and young people, without access to independent legal representation.

Criminal Records

We note in paragraph 4.5.1 that PPS diversionary disposals are recorded on a young person's criminal record and that a record can also be kept on police databases. Recommendation 21 of the youth justice review clearly states:

Diversionary disposals should not attract a criminal record or be subject to employer disclosure.

The Youth Justice Review drew a clear linkage between the issue of rehabilitation and reintegration and the disclosure of criminal record information, noting that all the research evidence suggests that providing young people with stable employment is one of the most effective ways of preventing re-offending, but that the system of informing potential employers of an offender's criminal history acts as the most potent barrier to accessing such employment.³⁵

Criminal Justice Inspection NI in a 2015 report into progress on implementation of the youth justice review recommendations noted that recommendation 21 had not been achieved and that:

*'In terms of the YJR, diversionary disposals may still be disclosed and a clean slate is not available at aged 18. This does not accord with the views of the YJR.'*³⁶

Furthermore, the UN Committee on the Rights of the Child in 2016 said the UK Government should:

'ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18, and that diversion measures do not appear in children's criminal records'.

We know from our direct employability work with young people that a criminal record can have a dramatic impact on a young person's ability to move on and create a stable future.

Looked After Children

Include Youth has for a number of years been calling for action to address the over representation of young people from the care system within the criminal justice system in Northern Ireland and in particular within a custodial setting. Contact with the justice system for young people in residential care is an issue of particular concern.

³⁵ 'A Review of the Youth Justice System in Northern Ireland', September 2011, p.82.

³⁶ CJINI, Monitoring of Progress on Implementation of the Youth Justice Review Recommendations, December 2015, p51

In 2011 the Youth Justice Review recommended that *'looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population.'*

Despite the fact that 8 years ago an independent team of experts commissioned by the Department of Justice to carry out a review of Youth Justice in NI, highlighted the significant over representation of looked after children in Woodland Juvenile Justice detention centre as a pressing problem, latest figures suggest little improvement. Youth Justice Agency states that the proportion of individual young people involved with custodial services that were looked after increased to 43% in 2017/2018 from 39% in 2016/2017 and 29% in 2015/2016.³⁷ It appears we are actually going in the wrong direction and as a result some of our most vulnerable young people are being brought into the criminal justice system, we believe unnecessarily, when their needs would be better met elsewhere.

It is clear, given the continued inappropriate detention of extremely vulnerable young people and the over-representation of looked after children in the youth justice system, that detention is not being used as a measure of last resort and that the recommendations of the Youth Justice Review in this regard have not been implemented. The young people we work with talk about the difference in response to children in care to those living with their parents. Many of them say that parents would not call the police if you hit your sibling or broke furniture deliberately - you would be told off and there would be consequences but the police would not be called. They want to see a different approach to challenging behaviour and for staff in children's homes to be trained to manage these behaviours. They tell us that some staff are quicker to involve the police than others. Young people are asking for a more honest, transparent and respectful approach taken to challenging behaviour within children's homes.

While we note in paragraph 5.2.3 of the Guidance the recognition that police are more likely to be called to a children's home than a domestic setting to deal with an incident, and that Prosecutors should bear this in mind when dealing with such incidents, we remain concerned about the potential to criminalise looked after children. We agree that a criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child.

³⁷ YJA Annual Workload Statistics 2017/2018

Consultation with young people on Guidelines for the Prosecution of Children and Young People

To inform our response to the Guidelines we consulted with a number of young people who are currently involved in Include Youth programmes as well as a group of young people detained in Woodlands JJC. The ages of the young people ranged between 16 – 24 years old. We spoke to 31 young people in total. The following is an overview of young people's responses to the Guidelines and more generally, their view on the role of the PPS.

Young people have a lack of knowledge on the PPS

Most young people we spoke to were unaware of the detailed operations of the PPS, and many never even knew it existed.

"Nope don't know what it is."

"No one has ever heard of it."

For the select few who had heard of the PPS, they still were unaware of their processes.

"I think loads of young people don't understand any of the system. They don't know what they're in for or being convicted of, and sometimes their solicitor doesn't even know."

"I just the know the PPS as in case building – if someone needs evidence, they get it."

"I'm not told anything in court. I got four months detention."

"I need to know what is going on so I can make sure I am being treated fairly."

The PPS does not consider the best interests of young people

The PPS Guidelines repeatedly mention that the best interests of young people are always considered, yet most of our young people feel differently. They feel as if the PPS "does what they have to do" in order to complete their jobs and that decisions might be made against the young person's best interests.

"They consider the law before your personal needs."

"Don't think it's true that they consider best interests of the child."

"The only time they consider a person's best interests is if they have mental issues, but even then they don't care most of the time. It's just a budget game."

“Depends who is making the decision.”

Our young people feel as if they are “*just a number*” to the PPS and when they are detained for low level crimes, this is not the best option nor does it make sense.

“We would be involved in more low level crime, and we shouldn’t be sent to prison for this.”

Some young people can agree that at times custodial detention is the best option for more severe crimes, such as murder, and they are aware that the PPS is “*just doing their job*,” but on the whole, they do not believe the PPS considers the best interests of the child.

Factors young people think should be considered before the PPS makes a decision

Most young people are aware of the main factors that the PPS takes into consideration before making a decision for a case. They mention that age, family, criminal history, family background, and reputation likely should come into account.

“It is good that they take things into consideration but they don’t always do that.”

However, one young person notes:

“If you have previous offences, all other things [appear to] become less important. They should consider all those factors all of the time regardless of previous convictions.”

Young people also note that it’s valuable for the PPS to note where and why the crime was committed, who the victim was, whether or not there were any weapons involved, and who they were with when the crime was committed.

Additionally, several times young people have noted that if they come from a care background, then it is essential to note how that background may have contributed to the crime being committed.

*“If you are brought up in a care home then that is different, instead of a normal house, you are going to be f***ed up. Even if you are in your home though, in the first 5 years you could be brought up wrong by your parents.”*

Some young people, “*don’t think they take mental health into consideration*” because at times a person can struggle with their mental health but might not be necessarily have had an official diagnosis.

“not looking at mental health enough.”

“They are not looking at whether your head is away at that stage.”

Multiple times our young people mentioned that mental health appears to not be considered when PPS is making their decisions.

“Personal wellbeing of the person that got arrested- something could be wrong- mentally or emotionally- I don’t think they consider this.”

Young people’s understanding of the PPS Process

Our young people are very unfamiliar with the various processes and roles of the PPS, including those who have been directly involved with their own cases. One young person states:

“When I was involved, they told me what to do and where to go, but they would not tell me why. I just listened.”

One young person said:

“They disregard your personal needs.”

This young person believes it is the responsibility of the PPS to keep young people involved and educated about the decisions that are being made, along with the processes that are occurring.

The PPS does not have all the information they need

Our young people think that the PPS do not always have all the information they need to make an informed decision. When a case actually is considered, time may have passed and conditions for the young person may have changed.

“If you’re being prosecuted, by the time you get to court your life may have changed. What they have on paper might not be relevant anymore.”

“There is a lot more that they should know.”

“Should have the opportunity to speak to them directly.”

Additionally, in accordance with factors that young people think should be considered, one young person states:

“They didn’t take into consideration that I was in a bad place when I did what I did.”

Our young people also feel it is challenging for them to trust the PPS:

“You’re meant to trust the PPS but sometimes they are discriminating and intimidating.”

Young people's views on the training needs of PPS

The young people think it is very important that the PPS has training and a proper understanding of those who come from a care background and what implications that might have on a person. One person says:

"They should be made aware of the care background, how they were brought up, and where and what they are doing."

Another young person adds that those from a care background are:

"not brought up by relatives, so they may not be showed what is right and what is wrong, and they don't know any different."

The young people also know that the PPS are just looking at a file and *"don't know you personally"* and some recommend that the young people should have the chance to speak directly with the prosecutors so they can hear their *"side of the story."*

"They should get to know you and your situation."

Overall, young people hoped that the PPS has enough training on young people but a number of young people felt that more training was required.

"I would hope they are trained."

"They probably need more training."

"Young people have different needs that they should understand."

"They shouldn't be working with young people if they don't understand the background of young people and they definitely need more training."

Impact of PPS decisions on young people

Our young people are aware that many decisions made by the PPS can negatively impact them afterwards. In relation to a decision to detain a young person to custody:

"They can get used to being inside, reoffend when they get out, and come right back in."

"Jail would make you paranoid. You might be hanging around murderers and forced to stay with them for 6 months. You're not surrounded by anyone normal and you might be in there for doing nothing too."

"people lose their freedom."

“Can’t see their family.”

“They don’t have as much freedom and that’s just over one silly mistake.”

“they might hurt other people.”

One young person talked about alternatives to detention as a better option:

“should be given community service.”

The young people talked about the impact a custodial sentence has on a young person’s employment opportunities:

“It might be harder to get jobs. Obviously in the field of the crime they committed it would make sense if job options were limited, but it shouldn’t be an overall blanket. People should still have the chance to work but there should be boundaries.”

Young people worry that having a criminal record can negatively impact them in many ways, including in gaining employment.

“Everyone deserves a second chance, and they need the right support rather than just being put through a system.”

Young people felt strongly that young people who have been involved in the justice system should be given every possible support to help them reintegrate and that their individual needs should be adequately addressed.

“PPS should be responsible for looking at your mental health when going into jail and when coming out. If you went into jail or came out and committed suicide then the PPS should be responsible ‘cause they put you in there.”

Young people want the PPS to spend more time considering the impact of their decisions on children and young people’s lives.

Young people’s views on diversion

When asked, most of the young people were not totally aware of what the term ‘diversion’ meant and were not familiar with the array of diversionary disposals available. However, many young people were aware that community service is a possible alternative to prosecution and detention:

“There are alternatives, like picking up litter and all that.”

“I had to do community service, but I didn’t like it”.

“Have heard of the word diversion and know that it is an option but don’t really know what all is involved.”

When it comes to discussing whether or not diversion is a better option, our young people mainly agreed that diversion was preferable for less serious offences.

“It depends on why you are being prosecuted, but if your crime is minor then diversion might work. If someone commits a more serious crime, like murder, then they should be prosecuted.”

“It depends on the level; high level crimes should be prosecuted.”

“It depends on the severity of the crime if you’re prosecuted or not.”

“Drug dealing has different levels and those on the bottom shouldn’t be in jail, and those who do go to jail shouldn’t be there for life, shouldn’t be arrested for 2-3 years either, and maybe put into a separate unit and not with people of different crimes.”

“Yes, a diversion would be so much better depending on what crime it was.”

Young people were aware of the factors the PPS take into account before making a decision on prosecution or diversion:

“depends on how dangerous the case is”

“case by case basis”

“public interest matters.”

When it comes to young people who may have a mental illness being brought into the justice system, the young people were fully supportive of diversion.

“Diversion might be better if they have a mental disability.”

“Some young people just need more help, like with their mental health issues, so they should be sent to Beechcroft, not here [JJC].”

However, one young person thought that sometimes some young people may accentuate their mental illness as a reason for committing a crime.

Most of the young people supported diversionary practices:

“a much better alternative than prison”

“be based on restorative justice.”

Additionally, they think that it is important that young people who do end up going through the justice system are supported and if this support is effective it can mitigate the negative impacts of contact with the system.

“Young people should get essential skills when they are in jail so they can get an education.”

“If someone makes a mistake they should be given the opportunity to change their lives when they are in prison through education and activities.”

“People make mistakes and should get to make up for it.”

“Circumstances matter, but once a criminal does not mean you are always a criminal.”

Young people’s views on criminal records

The young people thought that it is unfair to give someone a criminal record for minor offending, and that:

“criminal records for restorative justice are not fair” and “too much.”

“it depends on the crime, but for petty crimes it’s unfair to give a criminal record.”

“Record of crimes at a young age would not be good, if they were diverted that would be much better.”

Another young person thought that if someone had committed a crime that it was acceptable that they should carry a criminal record.

“I think it still is fair because you still have committed the crime- it should stay on your record for a lesser time (one year)- if you don’t go to jail, it should stay on your record for half the time.”

Young people were aware of how having a criminal record can negatively impact them.

“Later down the line people might be able to find the record which can negatively affect you. But you can explain your situation and that you have moved on from it.”

“The young person has to deal with that responsibility [of having criminal record]”

“Records should not be for 2 years but for lesser time, like 6 months.”

One young person from Woodlands JJC talked about the frustration he felt because he could not access full information on his records.

“no access to my criminal record either.”

“they tell me I can’t have a copy. I’m allowed to see my notes but I can’t remember them once I leave. I wish someone would just look at these notes ‘cause they show how far I’ve come on and maybe then I’d be able to see my wee brother and sister. They would know I’m not a threat to them anymore.”

Young people's views on legal advice

The young people we spoke to are of the opinion that young people are not getting enough legal advice and are not aware of their options or their right to access the services of a solicitor. When asked if they think young people are getting the legal advice they need, some responded:

"No- definitely not."

"10% get it but don't take it."

"I wasn't given any. I was just told I need a solicitor, and didn't know my options. I would have wanted a social worker or police to tell me, and to give me information to take away with me."

Young people think it would be:

"good to have their options written down so that if they don't feel they need a solicitor they could still read their rights and options."

One person had a more positive experience, but understands that other young people do not:

"I got good legal advice. I know some young people that don't want legal advice 'cause they don't think that they need it."

"When I go to the video link, it comes up across the top everything that should happen in court and it tells you what the courts are meant to do and what I am supposed to be told, but I don't know any of it. I go to court and I don't even know what I'm up for. If I even knew a couple of days before going to court that I was going, I would be able to ring my solicitor to make sure everything is sorted for it and sort my own head out. But I just woke up that morning, was told I'm going to court and will be in the car on my way there, and still no one is able to tell me why I'm going there. Then I go in and they tell me I have a 4 month sentence and that's all, I don't even know what it is for."

Young people think that legal advice should be taught in school, through solicitors, and by their parents.

"We didn't know we were entitled to free legal service, and advice should be free for every young person."

"Someone should be definitely teaching them about their legal rights but also what is right and wrong."

"schools, parents, PPS should teach you through the process."

“We would love open forums like these ones to learn more about our options and legal advice.”

“Young people are meant to get all this advice but we never do.”

“I would want someone independent to be explaining it to me because then I would know that they weren’t biased.”

Concluding Comments

We hope that our submission is useful to the PPS as they take the Guidelines forward. We are keen to continue to make a positive contribution to the next stages of the guidance and in particular to ensure that young people’s views as expressed in our submission are taken into account. We are happy to discuss any of the points raised in our submission and look forward to hearing how the PPS will take on board the issues highlighted.