



Response to PSNI Youth Service Instruction

December 2016

For further information contact Paula Rodgers
Policy Co-ordinator, Include Youth, Alpha House, 3 Rosemary Street,
BELFAST, BT1 1QA

028 9031 1007 paula@includeyouth.org
www.includeyouth.org @includeyouth

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
- Start Programme – a collaborative partnership programme with community based organisations, targeted at young people in the North Down, Ards and Belfast areas
- 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

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

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. We also deliver a joint employability mentoring project with Business in the Community.

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.

Comments

1. Youth Justice Engagement

We welcome the opportunity to respond to the Service Instruction providing guidance for officers when dealing with young people who have committed offences. We note that the title of the document states that the instruction 'provides guidance for officers when dealing with young people who have committed offences'. Yet within the body of the document there is a section on 'non-offence behaviour'. The current title does not appear to take into account that all police contact with children and the accompanying service instruction will not necessarily be about offending behaviour only.

We welcome the intention to prevent children from entering the criminal justice system and agree that collaborative working with other agencies, including statutory, community and voluntary sector is critical to reduce the numbers of children entering the system. While we welcome the commitment to treat all children, particularly those who are the most vulnerable with dignity and to consult them on policing issues we would recommend a reference be made to the need for officers to respect and realise the rights of children in all their contact with the police and to ensure that acting in the child's best interests is the guiding principle for all officers.

Children have a right to be consulted about decisions affecting them (Article 12 UN Convention on the Rights of the Child), and if the Service Instruction is to be effective it is important that children and young people are given the opportunity to contribute to the development of the Service Instruction. In addition, Include Youth submits that a version of this Instruction should be produced in forms accessible to children and young people of different ages, telling them about how they should expect to be treated by police officers.

Include Youth believes that the instructions would be strengthened if it explicitly recognised the difficulties which police have had, in Northern Ireland and elsewhere, in establishing positive relationships with young people. We consider that the document would be more effective if it more directly acknowledged these challenges, and the reality in which police operates in this jurisdiction.

Include Youth would also welcome some focus on police officers approach to antisocial behaviour. Antisocial behaviour is a complicated subject which often

impacts upon confidence levels in the police, the stereotyping of young people, ‘stop and search’, community relations, the use of public space and children’s rights. Often ‘antisocial behaviour’, used in relation to young people, can describe both legal and illegal actions and indeed some activities young people are completely entitled to engage in (such as congregating in public places). In practice this creates a point of conflict between young people and the PSNI, a conflict which has substantial impact on the confidence levels of young people and which has the potential to dramatically affect the tone of how individual young people interact with the criminal justice system as a whole. We cannot underestimate the importance of a shared and understood definition of antisocial behaviour. It is clear that there are drastically different interpretations on what constitutes antisocial behaviour with variations between the police, some members of the public and young people. If unresolved this will continue to have an impact on the number and types of incidents reported, the police response to those, the relationship between young people and the police and perceived levels of antisocial behaviour.

We welcome the references in the document to the ECHR and the UNCRC. Whilst we are pleased to note the references to the UNCRC, we believe that more weight should be given to the Convention as a set of basic standards on which the instructions are based, particularly in light of the fact that the instructions are designed to impact solely on children and young people. The principles of the UNCRC are all relevant to the discussion of policing and young people in Northern Ireland. The “best interests” principle (Article 3 CRC) should be included in the document so that all officers are aware that when dealing with children they must prioritise the child’s best interests. Similarly express reference to Articles 2 and 12 should be enhanced to increase all officers awareness of the child’s right not to be discriminated against (Article 2), and to meaningfully participate in all aspects of their lives (Article 12). Some reference could also be made to the UNCRC Committee’s Concluding Observations. We would welcome these references being included in section 1 of the document.

We would also recommend a reference to the NIPB’s Human Rights Annual Report 2015 within the document, particularly those sections within the Annual report in relation to children and young people. It may also be beneficial to reference the NIPB’s Human Right’s Thematic Review on Policing with Children and Young People (2011) which was updated in 2013.

2. Identifying Vulnerable Children

We welcome the reference to the need for officers to be aware of the particular vulnerabilities of some of the children and young people they come into contact with. It may be helpful to actually identify the nature of these vulnerabilities, for example,

mental health difficulties, Special Educational Needs, Looked After Children, speech and language difficulties, victims of abuse, under paramilitary threat etc.

3. Non-offence behaviour

We welcome the inclusion of the sentence on the need to inform the child and their parent/guardian of their right to legal advice. We would also ensure the need for the child and parent/guardian to be informed of the fact that a record will be made of the incident and the possible implications of this information being held on record and in what circumstances that information would be disclosed or shared with other organisations and how long the information would be retained for. This information is particularly important given the fact that it relates to non-offence behaviour.

We note that if a child receives 3 non-offence referrals within a 12 month period the YDO should automatically consider referral to a relevant agency or multi-agency forum. We welcome that if warning signals that the child may be at risk are evident in advance of 3 referrals that suitable action would be taken to ensure the child receives the necessary support as early as possible. Multi-agency work and interventions must include engaging with parents or carers, and we believe that this work with families should be expressly stated in the document as it is well established that a Family Support model which is based on early intervention can greatly mitigate against the risk of a child later becoming involved in risk-taking behaviours, including coming into conflict with the law.

We agree that the reasons for inclusion of non-offence referral information in an investigation file must be stated clearly and full reasons for inclusion documented. We would welcome more detail on the definition of 'exceptional circumstances' in which non-referral information would be included in an investigation file or made available to the decision maker.

We would welcome more information on the 'necessity' criteria which must be considered before the arrest of a child. This is especially pertinent with regard to looked after children. Include Youth have highlighted our concerns on numerous occasions about the over-representation of looked after children in the youth justice system.

We remain concerned about the inappropriate use of custody for children and young people, and in particular the use of remand under PACE. Clearly this runs contrary to international children's rights standards. Whilst we recognise that responsibility in this area includes but is not exclusive to the Police Service, and that much work has and continues to be done to solve this significant problem, we believe that this document should contain reference to the clear protocols between police and other agencies (e.g. residential care homes) which will ensure that vulnerable children and

young people are no longer inappropriately placed in custody by allowing for more creative responses to dealing with children who present behavioural challenges. We welcome the references to Article 37 and Article 40 of the UNCRC within this section.

However we do have concerns regarding the increasing blurring of lines between non-criminal and criminal behaviour, often described as 'net-widening' and most acutely exemplified by definitions and responses to what is labelled 'anti-social behaviour'. The PSNI needs to be much clearer regarding what types of behaviour/situations it is appropriate for them to become involved in responding to.

There is a significant body of evidence which demonstrates the deeply damaging impact contact with any statutory criminal justice agencies, including the police, has on the lives of young people. In light of this the PSNI needs to ensure that non-stigmatisation and non-criminalisation are the cornerstones of any effective diversionary approaches to youth offending which are undertaken in partnership with communities.

Criminal Records

We welcome the inclusion of age appropriate information regarding the disclosure of information and police records in relation to diversionary disposals. We would be keen to see any age appropriate documentation which has been developed to assist officers to fulfil this recommendation.

We also welcome the reference to the need to inform children about the new Access NI Filtering Scheme, which should include reference to those offences which will never be filtered out ie. Specified Offences. . The Specified offences list is extensive and includes many offences for which young people are commonly charged with. Research commissioned by NIACRO revealed that 18 out of the 25 highest occurring offences are listed on the specified list and under the current regime would never be filtered. Children and young people are unclear about what is included in the list of specified offences. They may be aware of the more serious offences that are included but are not aware of those less serious offences which are included, and for which young people are commonly charged for. Some attempt should be made within the instructions to expand further on specified offences and what sort of offences are included, particularly those that are most commonly associated with young people.

It is essential that children and young people are made aware of the implications of disposals and fully understand the implications with regard to the possible impact on their decisions and life choices with regard to employment etc. in the future.

Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people. These concerns are compounded by the fact that children can be criminalised at the age 10.

We believe that the system of disclosure as it currently stands fails to recognise the damaging impact having a criminal record can have on a young person. It can affect a young person's ability to secure education, training and employment. Shackling young people with a criminal record for a seemingly unending period of time, and all that that entails, runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education, if they are stand a chance of keeping out of the justice system.

Despite the fact that many of the young people we work with who have a criminal record, have not been convicted of a serious offence or been deemed as being a risk to public safety, they still have to disclose the conviction in a wide range of circumstances.

A criminal record can have an impact on:

- Gaining employment
- Accessing further or higher education opportunities
- Accessing training opportunities
- Accessing volunteering opportunities
- Opening a bank account

It is essential that children are made aware of the far reaching implications of an admission of guilt and the potential outcomes of all disposals, including the Youth Diversion Scheme.

In our direct work we have found that the whole issue of criminal records and disclosure generally is a confusing topic for many young people. In the past few years we have conducted a number of focus groups with children and young people on the topic of criminal records, in order to feed into government consultations on the topic. Many of the young people we work with are not aware that diversionary disposals can be included on a criminal record. The young people found it hard to get their heads around the review process and to fully comprehend how the process would operate. Given the complexity of the criminal records process in general and the need for each case to be looked at on an individual basis, it is hardly surprising that the intricacies and the steps involved in the process are difficult for the young people to grasp and comment on.

The focus groups we conducted demonstrates the need for young people to be able to access independent, child friendly, tailored advice on the criminal records process,

including filtering and review. While it is a necessity to provide child and young people friendly written guidance on the operation of the review mechanism, it seems likely that an informed adult will have to explain the process step by step as well, if a young person is to fully understand how the guidance relates to their individual circumstances.

It also once again reminds us of the lack of clarity generally on what disposals attract a criminal record and the long last implications of a criminal record. Further work must be done on this first level of understanding before we can expect children and young people to grasp the detail of the filtering and review processes. But it is essential that Police Officers do all they can to explain the implications in as accessible and transparent a way as possible.

4. Stop and Search/ Question

Include Youth remain concerned about the high numbers of children and young people subject to stop and search and questioning. As the NIPB update on the thematic review of policing of children and young people stated, we are also concerned that there is a possibility that stop and search powers are being used inappropriately (page 31).

Over the years we have conducted a number of consultations with children and young people on issues of policing. Almost of all of the young people we spoke to had negative experiences of being stopped and searched, more often than not this was on a consistent basis and was itself a factor in the level of confidence they held in the police. In some cases it was reported that negative stop and search incidents had led to additional charges for young people. Include Youth consistently raise the issue of 'stop and search' and point out that young people feel targeted and victimised as a result of the use of 'stop and search' powers. They also report inconsistent experience of Officers' communication when it comes to providing a rationale for the 'stop and search' and their rights within that process. Young people also believe that 'stop and search' powers are used against them at a much higher rate than against adults. Include Youth are concerned about the extensive use against young people and also the experiences of those young people when they are stopped.

Include Youth would like to see the effectiveness of 'stop and search' assessed. The experiences of young people suggest that not only does the excessive use of 'stop and search' damage relationships but also subsumes substantial police resources, with this in mind an analysis of the data and the effectiveness of this practice would be extremely useful. All powers to stop and search children should be exercised in

compliance with human rights and in particular with key provisions on the UN Convention on the Rights of the Child, including Article 2 (non-discrimination) and Article 3 (best interests). The use of stop and search powers should also comply with the PSNI's obligations under Section 75 of the Northern Ireland Act 1998.

"They stop and search me all the time."

"They stop you just because you are young."

"They stop you depending on how you are dressed."

"They use the terrorism law to stop and search us, not allowed to do this but because we are young they get away with it."

"There has to be an actual reason to stop you - but there never is."

"They don't give you a reason for stopping you, they just say it's about drugs or weapons, but they don't give an actual reason."

"I have asked for a stop slip before, they just laughed at me and said there were none."

"They harass young people; I get stopped all the time."

Young people tell us they feel targeted and demonised by the PSNI and it is clear this has an associated negative impact on their level of confidence in the police service. Almost unanimously the young people within focus groups felt their age, appearance, location and family history meant they were demonised and specifically targeted by the Officers. They believe this manifested itself as extra attention, excessive use of 'stop and search', constantly being viewed with suspicion, being looked down on by officers, being forced to disperse from public spaces and in many cases incivility. They believed the attention they receive from the police, including being questioned or searched on the street had a knock on effect on how young people are viewed by the communities in which they live.

"They treat young people differently, we are branded."

"They make assumptions and judgements about young people."

"You are more likely to be stopped because of what you are wearing."

"They always stop you if you are wearing a hoodie."

"They treat you worse if you are from a worse area."

"The PSNI harass young people."

"Young people are treated differently."

We believe that the Stop and Search/ Question section in the Service Instruction could be strengthened to ensure that Officers are aware of children's rights with regard to the use of stop and search powers. It is also concerning that the language used in this section may give the impression that children and young people are more likely to engage in criminal behaviour than the general population, thus reinforcing negative stereotypes of children and young people amongst Officers. We note the use of the word 'embarrassment' on page 10 and would recommend that this is amended to strength the focus on ensuring children's rights are upheld by officers as opposed to minimising any sense of embarrassment the child or young person may feel.

5. Youth Engagement Clinics and Diversionary Disposals

We would welcome more detail on what is meant by 'rough guide' in relation to a young person's eligibility for Youth Engagement.

A serious concern of Include Youth is that many children coming into contact with the youth justice system generally and in particular through these clinics do not access legal advice before accepting diversionary disposals. Most children attending YE clinics will **not** have had a legal representative or legal advice, despite being permitted to bring a legal representative and the availability of legal aid.

Diversionary measures such as restorative cautions, informed warnings and diversionary youth conferences are being offered at the youth engagement clinics and are being accepted by children and young people. These can all potentially be disclosed as part of a future criminal records check. We believe that it is essential that children and young people must always receive independent legal advice before accepting a diversionary measure and must be aware that accepting these diversionary measures can lead to a criminal record that can be disclosed later in life when a child or young person is seeking education, employment or training. All Officers dealing with children and young people must be made aware of these implications.

6. Police Disposals

We welcome the reference to the ECHR and the UNCRC in this section. Our comments in the previous section relating to the need for Officers to make children and young people aware of the implications of the outcome of Youth Engagement

Clinics are also relevant when it comes to other police disposals, such as Informed Warnings and Restorative Cautions.

We agree that it is vital that all information pertaining to a case, especially those involving looked after children, is made available to the decision-maker (prosecutor) and that the provision of such information must be compliant with the Human Rights Act.

It is essential that the YDO is consulted when considering a Community Resolution as a disposal for children.

The United Nations General Comment No 10 on Juvenile Justice notes that as the majority of children and young people commit minor offences diversion should be a well-established practice that can and should be used in most cases. 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.

In view of the findings of the 2011 Review of the Youth Justice System that too many officers are still adopting a judgemental and prejudicial and even antagonistic attitude towards some young people they encounter, a finding reinforced by the Policing Board's Thematic Review on Children and Young People, the need for proper checks and balances around the use of discretionary disposals with children and young people takes on an even greater importance.

A number of young people from an Include Youth project have cited concerns about police accountability:

"If the police know him, if they don't like him, there's not any way they are going to offer one (NCD or DD)."

"A cop shouldn't decide. A judge has to be fair, but the cop and the victim could rip the arse out of it and give you what they feel like."

"Police Officer's discretion worries me more than victim."

"It should be the victim's decision before the cop – because the policeman might not want to give you a chance, but the victim does."

"It would depend on the peeler – if you got an ok one or not."

Given all of Include Youth's concerns regarding the use of discretionary disposals with under 18s, as outlined above, it is imperative that proper and robust independent oversight mechanisms are in place.

8. Charging Policy

We welcome the reference to the need to give consideration to Section 75 of the Northern Ireland Act 1998 and Article 3 of the UNCRC. The best interests of the child must be at the forefront of all decisions regarding the use of discretionary disposals and diversionary disposals.

9. Detention after charge

We welcome the reference to Article 3 of the UNCRC and the need for the best interest of the child to be a primary consideration. This section should include specific reference to Article 37b of the UNCRC.

Include Youth are very concerned that currently custody is not being used as a last resort but rather as a means of dealing with young people who are displaying challenging behaviour. There is clearly an issue which needs to be addressed of children being moved from residential homes to the juvenile justice centre. Include Youth have previously stated that the onus should now be on the DoJ and DHSSPS to introduce measures to ensure that no child or young person in their care is detained in custody unnecessarily. The accommodation and residential care of looked after children who come into contact with the criminal justice system must be addressed as a matter of urgency. All Officers' must be made aware of the responsibility of Trusts to provide alternative accommodation.

Bail

We are concerned about the wording on page 21 which states that 'children by their **characteristics** find it more difficult to adhere to certain bail conditions'. Include Youth are of the view that children are very often given unrealistic bail conditions which set them up to fail. This is contrary to the view expressed in the instructions that children 'by their characteristics' are unable to adhere to bail conditions.

We welcome consideration that for under 18 year olds, bail should be granted without conditions.

The 2011 Youth Justice Review Team noted that looked after children are remanded to the JJC for trivial offences and that the criminalisation of looked after children as a result of them breaching bail conditions is a critical issue.

We therefore welcome the reference to the specific needs of Looked After children within this section in the instructions. We agree that any bail conditions must be reasonable, achievable and relevant and that Looked After children should enjoy the same rights as children living at home. We also welcome the statement that arrest for breach of bail should be a measure of last resort and that instead of arrest

consideration should be given to the possibility that the conditions imposed are unrealistic.

Concluding Comments

Include Youth welcomes the opportunity to comment on the Service Instructions and are happy to engage further or expand on any of the issues raised, if that would be helpful.