

# include YOUTH

**Submission to the Youth Justice Review Team's Review of  
the Youth Justice System in Northern Ireland**

## **Executive Summary**

For further information contact Edel Quinn  
Policy Manager, Include Youth, Alpha House, 3 Rosemary Street, BELFAST, BT1 1QA

028 9031 1007  
[www.includeyouth.org](http://www.includeyouth.org)

[edel@includeyouth.org](mailto:edel@includeyouth.org)  
[twitter.com/includeyouth](https://twitter.com/includeyouth)

## Executive Summary

### 1. Introduction

Include Youth is an independent non-governmental organisation (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 – both locally and nationally. Include Youth works directly with young people to support them to be engaged with policy decision-making processes and to improve their employability. We produce resources and provide training, information and support to practitioners and organisations.

Include Youth welcomed the Minister for Justice's announcement to conduct a review of youth justice<sup>1</sup>, following the commitment undertaken as part of the Hillsborough Agreement in February 2010, to establish a:

*'Review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.'*<sup>2</sup>

Include Youth has built on the work of the Manifesto, the Background Paper and associated research in our submission to the Youth Justice Review which is grounded in the direct views and experiences of children and young people and practitioners working with them.

### 2. Child rights compliant youth justice system for Northern Ireland

The commitment contained in the Hillsborough Agreement to conduct a Review of Youth Justice stated that there would be a 'review of how children and young people are treated at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice.'<sup>3</sup>

Include Youth believes that currently the youth justice system in Northern Ireland is in breach of children's rights and human rights standards in a number of significant areas. Most serious among these are the low minimum age of criminal responsibility; the continued detention of children at Hydebank Wood Young Offenders Centre (YOC) and concomitant conditions endured – both will be dealt with in separate sections below – and the absence of the best interests principle in the youth justice system.

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<sup>1</sup> Minister for Justice David Ford MLA announces a Review of Youth Justice in Northern Ireland, Assembly Official Report (Hansard) 1 November 2010

<sup>2</sup> Agreement at Hillsborough Castle, 5 February 2010, paragraph 7

<sup>3</sup> ibid

A further serious issue regarding lack of child rights compliance, is the failure to incorporate the best interests of the child as the paramount consideration in all decisions affecting children in the law, policy, practice and the administration of justice, youth justice and policing law, policy and practice in line with United Nations Convention on the Rights of the Child (UNCRC) and other relevant international child rights and human rights standards. For example, Part 4, Article 53(1) of the Justice (Northern Ireland) Act 2002 states that the principle aim of the youth justice system is to protect the public and that the authorities should have regard to the welfare of children affected by the exercise of their functions. In addition, the Mission Statement of the Youth Justice Agency is ‘to reduce crime and to build confidence in the youth justice system.’<sup>4</sup>

### Recommendations

- Government should take measures to ensure that the youth justice system in Northern Ireland is fully compliant with international human rights and children’s rights standards. A rights-compliant youth justice should promote and guarantee:
  - generic *early intervention* (at the point of need and regardless of age)
  - provision of *universal* services to ensure that children fulfil their potential, families are supported, and the best interests of the child are paramount regardless of age
  - service provision that is *preventative*, steering children away from behaviour that might lead to offending
  - service provision that is *diversionary*, securing creative and realistic alternatives to criminal justice
- Responsibility for youth justice (services and policies) should be transferred to a childcare-based government department.
- Part 4, Section 53(1) of the Justice (Northern Ireland) Act 2002 should be amended to state that the ‘principal aim of the youth justice system is to promote the best interests of the child, prevent offending by children and protect the public.’
- The Mission Statement of the Youth Justice Agency should be amended to include the paramouncy principle of the best interests of the child.
- Children’s Champions in each government department should ensure the incorporation of a child rights/United Nations Convention on the Rights of the Child (UNCRC) proofing in the development of all legislation and policies affecting children and young people.

<sup>4</sup> [www.youthjusticeagency.ni.gov.uk](http://www.youthjusticeagency.ni.gov.uk)

### 3. Participation of children and young people

There are concerns regarding the rights of children in general and especially in the youth justice system, to participate in all matters or decisions affecting them in a manner consistent with their age, understanding and maturity. Regarding children in the justice system concerns arise regarding the extent to which they are able to meaningfully participate in legal proceedings due to: problems around information provision; lack of awareness of their rights; lack of independent advocacy; and inaccessibility of the legal processes, particularly court proceedings.

Other issues arise regarding young people's right to participate in policy development and service delivery. Children describe widespread concerns that their views are not taken seriously by adults. Despite some recent developments, children and young people in conflict with the law often experience their involvement in policy development as non-existent or tokenistic at best. Young people want to see real impact of their views having been taken seriously and acted upon. This requires appropriate structures developed in consultation with young people, which will ensure meaningful engagement where their views are respected, considered and taken seriously, and where decisions are reflected back to children taking part in consultation about impact.

#### Recommendations

- All criminal justice agencies and related government departments and agencies should have internal processes to ensure that the views of young people who are service users are heard and accommodated. Meaningful participation of young people in all aspects of the criminal justice system should be monitored by Criminal Justice Inspectorate Northern Ireland (CJINI) and Regulation and Quality Improvement Authority (RQIA). Law, policy and practice development and implementation should be based on consultation with all relevant stakeholders and particularly children, young people, their families and communities.
- Children and young people are entitled to receive consistent and high-quality independent advocacy at all stages of the criminal justice system from arrest to disposal and resettlement.
- Children should receive accessible information that takes account of their particular circumstances.
- All solicitors and barristers, who work with young people in conflict with the law, should only be permitted to do so following a period of specialized professional training and accreditation. Professional associations should be established, through the Law Society of Northern Ireland and the Bar Council of Northern Ireland, which should

oversee accreditation and selection to a panel of appropriately skilled and qualified legal practitioners in the area of child justice.

- The duty to consult with children under section 75 of the Northern Ireland Act 1998 should be implemented fully.

#### 4. Minimum age of criminal responsibility (MACR)

At 10, the age of criminal responsibility for children in Northern Ireland is lower than in most similar countries, and significantly lower than the age at which children can legally assume other responsibilities. For example, the age of sexual consent is 16, the voting age is 18. The age of criminal responsibility sits very incongruously alongside these other developmental milestones. Such milestones in essence bestow varying degrees of responsibility onto a young person are targeted at ages 16 to 18.<sup>5</sup>

Evidence shows that prosecution at an early age increases the chances of reoffending. Children must be supported to accept responsibility and address their behaviour and any underlying issues of unmet need in a way which does not label or criminalise them.

##### Recommendations

- The minimum age of criminal responsibility should be raised to 16 years of age in line with international standards and consistent with other jurisdictions.
- Children below this age who display concerning or harmful behaviours should be recognised as children with often complex needs. Interventions directed towards children below the minimum age of criminal responsibility should comprise a range of differentiated services and systems such as family support, social services, family group conferencing and secure care provision only as a last resort and in rare cases where that level of provision is established as essential.
- Safeguards should be introduced to ensure that the child has automatic access to independent advocacy services and formal judicial processes, particularly in cases where responsibility is disputed and where proposed responses to the child's alleged behaviours involve deprivation of liberty in secure accommodation. Current budgetary allocation to criminal justice agencies for provision of services to children in the justice system should be re-directed to a ring-fenced budget within **Department of Health, Social Services and Public Safety (DHSSPS)**. All victims harmed as a result of any act which would be considered a criminal offence if it were carried out by a young person over the age of 16 years should receive appropriate reparation, information and support from the state.

<sup>5</sup> Goldson, B. (ed) (2008) Dictionary of Youth Justice, Cullompton: Willan

## 5. Research and statistics

While there is no specific mention in the international standards with regards to data collection and dissemination, the UN Committee on the Rights of the Child has made unequivocal statements in General Comments 5 and 10 in relation to this issue.

Specifically they have stated that:

“The Committee is deeply concerned about the lack of even basic and disaggregated data on inter alia the quantity and the nature of offences committed by children, the use and average length of duration of pre-trial detention, the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion), the number of convicted children and the nature of sanctions imposed on them”<sup>6</sup>

The Committee emphasises that such information is necessary to ensure appropriate planning and delivery of youth justice services.

### Current Situation

In Northern Ireland there is a dearth of comprehensive, easily accessible, up-to-date statistical information with regards to children and young people who come into contact with the criminal justice system. In order to gain any sort of statistical overview it is necessary to contact each agency individually. This makes the system unnecessarily complex and unwieldy, and we submit that a system could easily be established, especially when one considers that every interaction a young person has with the criminal justice system is recorded.

### Recommendation

Include Youth recommends that quarterly and annual statistical bulletins are published recording young people’s journey through the system. The data should include (but not be confined to), numbers and age of young people arrested, offences, disposals, living situations and outcomes (e.g. re-offending).

## 6. Cross-cutting themes

The youth justice system must take cognizance of the impact of the legacy of the conflict. Despite the fact that many children today have grown up in a ‘peaceful’ time in Northern Ireland’s history does not detract from the persistent and long lasting social, economic, civil and political impact of the conflict.

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<sup>6</sup> 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

Current issues for marginalised children and young people include: paramilitarism and vigilantism; ‘control’ of housing estates and physical space; segregated space; sectarianism; differential policing, including PSNI use of informers or ‘touts’; and the security led culture within the prisons.

In addition, more ‘hidden’ problems which persist as a consequence of the legacy of the conflict include: issues of mental health, inter-generational trauma, domestic violence, poverty and education.<sup>7</sup> It has been well recognised that factors associated with the conflict and with a society emerging from conflict have impacted severely on child and adolescent mental health in Northern Ireland.<sup>8</sup> The Chief Medical Officer estimated that more than 20% of young people in Northern Ireland are suffering “*significant mental health problems*” by their 18<sup>th</sup> birthday.<sup>9</sup> The inter relationship between poverty and the conflict is deep rooted and enduring. Finally, one of the most striking and disturbing features of the continuing legacy of the conflict is the pervasiveness of violence and the threat of violence on the young people’s conversations, viewpoints, feelings and experiences and the extent to which it has been normalised. The result of this normalisation of ‘abnormal’ experiences according to one researcher has been “chronic anger, lack of trust in adults, isolation and feelings of marginalisation, bitterness at the other community or at the police, distrust of all authority, feelings of exclusion and marginalisation or lack of contact with or knowledge of the ‘other community.’”<sup>10</sup>

### Recommendations

- Long term investment and resourcing should be determined by need in all communities particularly those that experience structural inequalities exacerbated by enduring poverty and the legacy of conflict.
- Universal service provision to all children and families with targeted early intervention and family support directed to those requiring additional services to deal with domestic violence, parental mental health or alcohol/substance misuse problems,

<sup>7</sup> See Commissioner for Children and Young People (2009) *Children’s Rights: Rhetoric or Reality A Review of Children’s Rights in Northern Ireland 2007/08*: NICCY and McAlister et al (2010) *Childhood in Transition Experiencing Marginalisation and Conflict in Northern Ireland*, Belfast: Queen’s University Belfast, Save the Children and Princes Trust for detailed explorations of the social and economic impact of the conflict on children and young people within disadvantaged and marginalised communities.

<sup>8</sup> DHSSPS (2005) *A Vision for a Comprehensive Child and Adolescent Mental Health Service – The Bamford Review* November pp 15-16

<sup>9</sup> Chief Medical Officer (1999) *Health of the Public in Northern Ireland: report of the Chief Medical Officer, 1999: Taking care of the next generation* Belfast DHSSPS.

<sup>10</sup> Smyth, M. Et al (2004), *The Impact of Conflict on Children in Northern Ireland*, Institute for Conflict Research: Belfast, p99

challenges at school, lack of age appropriate play and leisure, need for parenting programmes.

- Full comprehensive Child and Adolescent Mental Health (CAMHS) provision to be available for all children in Northern Ireland.

## **7. Demonisation of children and young people**

Children and young people in Northern Ireland are increasingly viewed in a negative way, as a ‘problem’ which requires the identification of a ‘solution’. This issue is compounded for children in conflict with the law. The role of the media in negative stereotyping of children and young people has been crucial, with children often presented negatively in media reports or political debates – as a threat, a nuisance or anti social. Research has identified the potential impacts of such negative representations on young people as including: depression; anger; escapism through alcohol misuse; self-fulfilling prophecy; breakdown in inter-generational relations. Solutions have largely failed to address the complexity of issues, instead focusing on greater regulation and criminalisation of children and young people.

### **Recommendations**

- Government should engage with all relevant parties to provide public information regarding the complexities of the lives of many young people in the youth justice system.
- Government should develop public education initiative and deliver public awareness campaigns explaining the significance and effectiveness of non-criminal justice interventions in establishing inclusive and long-term community safety.
- Children’s Champions in each government department should ensure that language and terminology used in relation to children and young people does not create or reinforce negative stereotypes and reflects the diversity and complexity of children and young people’s lives, identities and experiences in Northern Ireland.
- The BBC should be designated as a public authority under Section 75 of the Northern Ireland Act 1998. This would place legal obligations on the BBC to have due regard to the need to promote equality of opportunity between certain categories including the age category. A module on children’s rights, encompassing child protection, should be incorporated into all journalism courses.
- Government departments should consider adopting a positive pledge, similar to that included in the Northern Ireland Policing Board’s recent Children and Young People’s Thematic, that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping.



- Government should develop annual media awards for positive reporting of issues affecting children and young people.

## 8. Policing

The PSNI is generally the first point of contact for children and young people with the criminal justice system, acting “as one of the main gatekeepers in the criminal justice system”.<sup>11</sup> As such it is vital that the Review of Youth Justice fully examines current legislation, policies and practices regarding policing and children and young people and based on that review makes relevant recommendations for change.

### *Release of images of children and young people*

Following the release to the media and to communities of images of children and young people under 18 by the PSNI, via Operation Exposure in Derry and following on from rioting at an Ardoyne interface in North Belfast in July 2010, Include Youth raised serious concerns regarding the rights, including potentially, the right to life, and protection from all forms of violence, of those children and young people identified.

### **Recommendation**

- As a matter of urgency the PSNI should respond to the Policing Board’s Thematic Inquiry into Children and Young People Recommendation 13 by stating its intent to comply with, setting out a short time frame within which the policy will be amended and detailing how the amended policy will be communicated to all relevant PSNI officers.

### *Use of stop and search powers*

Figures and anecdotal evidence suggest that the powers to stop and search are frequently used against children and young people. There is no doubt that the experience of being stopped and searched for children and young people, which is at best distressing and at worst frightening, is likely to have a very significant impact on their individual perceptions of the PSNI and relations between the PSNI and young people within communities in general. Young people’s experience is that once they have had any contact with the PSNI or the youth justice system the probability of them being stopped and searched is increased.

The Northern Ireland Policing Board’s Thematic Review of Children and Young People noted the increase both in the use of Section 44 of the Terrorism Act 2000 and an

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<sup>11</sup> O’Mahoney, D. And Deazley, R. (2000) *Juvenile Crime and Justice – Review of the Criminal Justice System in Northern Ireland*. Criminal Justice Review Group . Research Report No 17, p 37

increase in the use of section 21 of the Justice and Security Act 2007 power to stop and question a person.<sup>12</sup> However as referred to earlier, the Thematic Review states that “it is not possible to quantify the full extent to which section 44 TACT, or any other stop, search and question power, has been used against children and young people”,<sup>13</sup> as the PSNI quarterly statistical reports to the Policing Board do not record the age of the person stopped, searched and/or questioned. The reason given for this is that the PSNI cannot require a person to disclose their date of birth. Include Youth believes that this is not acceptable and that an approximate age could be collected by police officers.

### Recommendations

- All powers to stop and search children and young people should be exercised in compliance with human rights, in particular, with key provisions of the United Nations Convention on the Rights of the Child (UNCRC), 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 in relation to the age ground.
- Consistent with Recommendation 20 in the Policing Board’s Thematic Review, quarterly data supplied to the Policing Board on the use of stop and search powers should include data on the approximate age of the person against whom the powers have been used, in order to enable the Policing Board (and others) to monitor statistics and to address any concerns regarding particular patterns that may emerge.

### *Police bail*

Currently the PSNI enjoys broad powers to detain children and young people charged with offences under the Police and Criminal Evidence (Northern Ireland) Order (PACE). These admissions are generally for short periods of time, ensuring that children are held securely pending a court appearance. Research demonstrates that use of remands impact disproportionately on looked after children, particularly those in residential care. While children and young people in residential care may behave in challenging ways, it is clear that currently custody is not being used as a last resort.

### Recommendations

- The test for the remand of children and young people charged with offences but not convicted should be amended to a single test which would be applied by the PSNI and the courts.

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<sup>12</sup> Northern Ireland Policing Board (2011) *Human Rights Thematic Review Children and Young People*, NIPB, page 91

<sup>13</sup> Ibid pages 92-93

- The test for bail should conform to international child and youth justice principles within the framework of children’s rights standards.
- A reformed test for the remand of children and young people must be established to suit the needs of children and young people. Flexibility should be built in to ensure that the background and individual circumstances of the child are taken into account.
- The lack of a bail address should never be used as a basis for remanding a young person.

### *Young people’s experience and perceptions of policing*

Research over the past decade or more, since the publication of the Patten Report in 1999, has demonstrated that young people’s perceptions and their experiences of the PSNI have remained largely negative.

### **Recommendations**

- The PSNI should make a firm commitment to the implementation of all of the recommendations contained in the Policing Board’s Thematic Review. It should be operationalised via an implementation plan which contains targets, time frame and indicators. The PSNI should address all outstanding, relevant recommendations from the UN Committee on the Rights of the Child, including the need for translation of child rights compliant policies into practice.

### *Anti-Social Behaviour Orders (ASBO)*

The use of Anti-Social Behaviour Orders (ASBO) against children and young people has been heavily criticised by a wide range of both international and domestic human rights bodies. Include Youth’s long standing opposition to the use of ASBOs against under 18s is well documented and is based on the following grounds among others: the definition of ‘anti-social behaviour’ is subjective; as civil orders there is a lower burden of proof – hearsay and professional evidence is admissible in ASBO hearings; civil and criminal law are blurred; reporting restrictions can be lifted, raising child protection concerns and setting ASBO proceedings apart from other court processes involving under 18s (while thankfully this hasn’t happened to date the potential remains); ASBOs can be used in conjunction with a prison sentence, effectively resulting in a form of ‘release under licence’.

Despite their extensive use against children and young people in England and Wales the use of ASBOs against children and young people in Northern Ireland has been significantly more limited, a result Include Youth would contend, of the vociferous opposition by non-governmental organisations (NGOs) and others to their introduction

and subsequent close monitoring of their use. However, evidence from children and young people and their workers, would suggest that the ‘threat’ of an ASBO has been substituted for an ASBO and is being utilised to the same end of controlling and regulating young people’s behaviour.

### **Recommendation**

- The Anti-Social Behaviour (Northern Ireland) Order 2004 should be amended to prohibit the use of ASBOs against under 18s.

#### *Training: Recommendation*

The PSNI should develop and initiate a module on children’s rights training as a core component of the PSNI’s Student Officer Training Programme. Other PSNI training courses including Probationer and Specialist Training courses should also incorporate a relevant focus on both the principles and the practical application of the United Nations Convention on the Rights of a Child and other relevant rights based instruments and standards in operational policing.

#### *Speedy Justice*

Include Youth has a number of serious concerns regarding the application of Discretionary Disposals by the PSNI to children and young people. It is apparent from our engagement with the PSNI that their policy intent for Speedy Justice is to give clear priority to the victim’s views as to whether discretionary powers should be used in relation to individual incidents, leading to inconsistent application of the law in contravention of international and domestic human rights standards.

Include Youth has serious concerns that Speedy Justice has the potential to be amongst the most disproportionate of all criminal justice outcomes. Amongst the outcomes associated with the use of Speedy Justice are financial reparation, an apology, and ‘anti-social behaviour counselling’.<sup>14</sup> Include Youth is challenged to understand how such outcomes can be proportionate to the level of offence involved when others in this category (Informed Warnings and Restorative Cautions) have no such requirements.

We have serious concerns that the introduction of Speedy Justice has been introduced in breach of section 75 statutory duty requirements.

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<sup>14</sup> Information discussed at meeting held by Include Youth with PSNI T/Superintendent Andrea McMullan on 11 March 2011

## Recommendation

- Given the serious concerns outlined above regarding the application of Speedy Justice to under 18s, coupled with the range of disposals already in existence which are available to deal with low level offending amongst young people, the PSNI should no longer apply Speedy Justice to under 18s.

## 9. Early intervention and family support

International research consistently demonstrates that children and young people are more likely to be involved in offending or anti-social behaviour if they leave school early, have special needs, live in poverty, have truanted or been excluded from school, have spent time in residential care or have experienced neglect or abuse within their families.

Currently the youth justice system has a role, and at times a significant and lead role, in providing responses to these children categorized as at 'risk of offending' and their families. Include Youth firmly believes that priorities for action based on early intervention, prevention and the provision of services necessary to support children and young people in need/ at risk are essential to reduce the number of children and young people coming into contact with the criminal justice system. Early intervention services should be supported but not directed by the justice system in Northern Ireland – but rather through a partnership which is led by Department of Health Social Service and Public Safety (DHSSPS), through Children's Services.

### Recommendations

- Adequate, appropriate and well-resourced early intervention should be provided to identify, support and address the needs of children and their families.
- Policy and practices should avoid stigmatising or criminalising children and young people for welfare based concerns. Family support services should be provided through a social care framework and delivered by voluntary sector providers in partnership with local communities, families, children and young people. These services should not be delivered by criminal justice agencies but by a range of relevant government bodies led by Department of Health Social Service and Public Safety (DHSSPS).

## 10. Diversion from formal criminal justice system

International standards are supported by a body of international evidence-based 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 marginalized 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.

Currently children who have become involved in low-level, minor and non-persistent offending behaviour are dealt with by the formal system through a series of incremental disposals. Include Youth submits that some of the current processes within the formal system raise issues regarding proportionality, legitimacy, effectiveness, efficiency and rights compliance. Current problems, particularly with regards to diversionary youth conferencing, include the fact that records can be disclosed even though it is not a criminal conviction; young people have raised concerns around informed consent and their ability to meaningfully participate; concerns around net-widening involving unnecessarily excessive and disproportionate responses to managing low-level challenging behaviour; lack of focus on the best interests of the child, and an over-emphasis on meeting the needs of victims – these are not mutually exclusive concepts, the process must meet the needs of the young person.

Include Youth would like to see a clearer emphasis on diversion *away from* the formal criminal justice system, focusing on community responses provided through multi-agency processes, delivered through a social welfare framework, including the use of community based restorative justice approaches such as family group conferencing.

### **Recommendations**

- Police officers should, as first point of contact with children in conflict with the law, act as gatekeepers, diverting them out of the formal system and redirecting children and their families to welfare-based support services within the community. Referral and assessment of the child's and families needs by the appropriate agency should be expedited and lead to the development of an individualized plan of support for child and family and victim if necessary.
- Resources currently targeted towards Diversionary Youth Conferencing should be redirected community based and holistic interventions such as the Family Support Hub model.
- A comprehensive critical and independent qualitative research project should be commissioned to examine the extent to which current youth conferencing processes, including diversionary youth conferencing, comply with proportionality and child rights standards; what the real experiences of and outcomes for young people, their families and victims has been.
- Detailed proposals as brought forward for consultation on record keeping to ensure transparency and rights compliance.

## 11. Diversion from re-offending

There is a concern that there are too many disposals available for young people and as a result young people and their families become confused about what is being given to them. Many of the young people we work with have had a multitude of various Orders and have been through various multi-layered processes, dealing with many professionals along the way.

Young people have some very practical suggestions with regards to what may support them to stop offending. These include:

- more programmes which include activities and events
- support to access education, training and employment
- support in tackling drug and alcohol use
- general support in the form of a key-worker who can be an advocate for them in carving their way through the what can often be the maze of 'orders' and conditions

*'See if I had a job, I wouldn't do any crime.'*

*"You need support – to get a job or stay off drugs, help to try and get on with your life."*

### *Delay*

The issue of delay from arrest to adjudication and disposal means that effectively justice is denied to many young people in conflict with the law. Much research has been undertaken which shows that delays in the processing of cases can have a much more negative impact on young people. It is well documented that most young people who get involved in trouble-making / offending behaviour, grow out of it over time and do not continue to offend into adulthood. Diversion is most effective when the child or young person is supported to take responsibility for their actions as soon as possible after the act has been committed and guilt admitted. It is imperative that all disposals are dealt with as speedily as possible, otherwise the young person may not remember the incident upon which they are being adjudicated, or in the interim they may have continued to engage in other forms of offending behaviours, and become more deeply ensconced in the criminal justice system.

### **Recommendations**

- The Youth Justice Agency should be re-defined to that of a specialist and sole body overseeing youth justice arrangements for under 18s.
- The Youth Justice Agency's remit should be changed to include: meeting the needs and protecting the rights of young people in conflict with the law.

- An action plan should be drawn up by the criminal justice agencies which is time bound and resourced to reduce delays between arrest and sentencing whilst ensuring due process and access to justice.
- Diversionary youth conferencing should be removed from the system which should automatically have a positive impact on reducing delay within the formal justice system, by reducing caseloads and concomitant pressure on Public Prosecution Service, PSNI, Youth Justice Agency, Northern Ireland Court Service and judiciary.

## **12. Custody**

Currently, children as young as 10 years of age can be detained in custody. Children are be detained at Woodlands Juvenile Justice Centre (JJC) unless they are boys aged between 15-17 years old, in which case they can be detained at Hydebank Young Offenders Centre (YOC). It is current practice to detain all 17 year olds at the young offenders centre, save in exceptional circumstances.

The Prison Review Team also established under the terms of the Hillsborough Agreement, has recently recommended that ‘children and young people under 18 should not be held in Hydebank Wood. Suitable accommodation for all children that meets the best interests of the child should be found on the Woodlands site or elsewhere,’ following suit from numerous independent inspections, reports and recommendations from the UN Committee on the Rights of the Child. Include Youth welcomes this recommendation.

It is essential that deprivation of liberty should be a measure of last resort and for the minimum necessary period of time. Children who are deprived of their liberty have the right to education and health, including mental health; to protection; to advocacy; to be treated with dignity and respect. Custodial services must ensure that children receive all necessary services, support and care.

### **Recommendations**

- Custodial sentences should be decreased, ensuring that deprivation of liberty is a ‘last resort’, for the shortest possible period, and confined to those presenting serious, immediate risks to others, in line with international standards.
- The detention of children under the age of 18 at Hydebank Wood Young Offenders Centre (YOC) should be ended and all enabling legislation should be repealed.
- The Minister for Justice should make a public commitment to end the detention of under 18s at Hydebank Wood Young Offenders Centre (YOC) and establish a transition



action plan, with a clear timetable for completion with cross departmental support at Executive level.

- During the transitional phase any young people detained at the young offenders centre should be entitled to full implementation of their rights. Specialist child and adolescent psychiatrist should be appointed, based in Northern Ireland, to advise the criminal justice agencies; efforts should be made to establish a relationship between a child or young person with mental health needs and Child and Adolescent Mental Health Services (CAMHS) in advance of their release; close working relationships and care pathways should be developed between specialist CAMHS and youth justice teams.
- Criminal justice agencies should collect statistics on the mental health of the children and young people that are within the criminal justice system and these should be shared with the health service.
- An independent and fully resourced advocacy services should be established within custody.
- All children deprived of their liberty should be treated with ‘humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age’ in line with Article 37 (c) and 40 United Nations Convention on the Rights of the Child (UNCRC).
- All professionals working with children and young people should be aware of and receive training about the United Nations Convention on the Rights of the Child (UNCRC) and children’s rights (Articles 4 and 42, UNCRC) and should be trained to respond to the special needs of children in line with the Beijing Rules, the Riyadh Guidelines and the European Prison Rules.
- Education and training should be a core provision for young people in custody.
- All children under the compulsory school leaving age should participate in education with statutory responsibility for the education of children in custody should be transferred from the Department of Justice to the Department of Education and all children should be entitled to access the national curriculum.
- All outstanding recommendations in relation to education and vocational training from the Northern Ireland Human Rights Commission’s report ‘Still in Our Care’, the Independent Monitoring Board’s annual reports, the Criminal Justice Inspectorate Northern Ireland Inspection Report and the United Nations Committee on the Rights of the Child should be fully implemented.

### **13. Rehabilitation and reintegration**

The reconviction rates for young people involved in offending behaviour – 70% of young people discharged from custody had re-offended within one year; coupled with the cost

of custody<sup>15</sup>; without even considering the best interests of the children and young people concerned provide a strong imperative for greater investment in rehabilitation.

Supporting young people with resettlement on release from custody is a central factor in enabling them to make a successful transition from custody back into the community and to stop re-offending. Reducing the rate of reoffending is in everybody's interests. It is also, from government to local communities, everybody's responsibility. When one considers the profile of young people in custody with all of the problems and challenges they face, including lack of educational attainment, lack of qualifications, a history of unemployment, homelessness, mental health problems, drug and alcohol addictions, lack of family support, resettlement and reintegration cannot be the responsibility of the Youth Justice Agency or Prison Service alone, out of necessity must involve all relevant government departments and agencies, as well as various voluntary and community organisations - in short a joined up approach.

There must be a seamless transition from custody back into the community, with a key worker to support the young person in terms of accessing appropriate accommodation, health services, education, training, and employability schemes for example.

Among the barriers to operationalising policies aimed at supporting rehabilitation are the continued high numbers of children on remand, whose pending criminal charges could be compromised by participating in particular programmes, and the fluctuating custody population.

### **Recommendations**

- The overriding emphasis from committal to release should be geared towards the re-integration of young people into their communities and into society.
- All of the outstanding recommendations on rehabilitation and reintegration in both the Criminal Justice Inspectorate Northern Ireland and Independent Monitoring Board's reports should be implemented.
- Specialised employability schemes should be supported to provide training and pre-employment opportunities for custody experienced young people.
- The needs of this particular group of vulnerable young people should be addressed within the NEETs Strategy (for young people not in education, employment or training).
- There should be consideration given to the appropriateness of disclosure of criminal records, particularly in relation to juvenile cautions and convictions, other than Schedule 1 offences.

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<sup>15</sup> Estimated to be £78, 750 per prisoner for 2009-2010 Source: Northern Ireland Assembly Research and Library Service Briefing Note on Cost Per Prisoner Place. NIAR 283-10 Paper 153/10 .

## 14. Complaints

It is our experience at Include Youth that very often young people involved with the criminal justice system do not make complaints. This may be for a variety of reasons, including the fact that often they do not contextualise what has happened to them in a rights framework, and even if they do so, they may have little confidence either in themselves or in the systems administering the procedures to persuade them to take the hugely brave step of making a complaint. In addition, they may also have had direct experience in the past of being let down by adults, professionals, systems, and therefore do not feel confident in placing their trust in such systems.

In particular, problems exist in relation to advocacy services, complaints mechanisms and independent representation for children and young people regarding the PSNI and while in detention. The experience of children and young people in relation to complaints against the PSNI has been far from satisfactory and would indicate that the mechanisms are not currently working effectively for children and young people. There is a lack of awareness among young people of the existence and role of the Police Ombudsman, and the Ombudsman currently does not record complaints for children under the age of 16. In relation to custody, it is essential that children have access to information and independent advocacy and an open, transparent, independent and robust system to deal with their complaints.

### Recommendations

- The Police Ombudsman's Office should conduct an urgent review of the effectiveness of its police complaints system for all children and young people, with a view to developing a tailored strategy and action plan for engaging with children and young people.
- The strategy and action plan should address raising awareness of the service among all children and young people, but particularly those most vulnerable, a dedicated system by which to record complaints from all ages of children and young people, children and young people friendly mechanisms by which to record complaints and children's rights training for all staff in the Police Ombudsman's Office.
- Recognising the inequality of arms with regards to vulnerable young people making complaints against individuals and/ or criminal justice agencies, all children in the formal criminal justice system should have the right to an independent advocacy service, which should be consistent from first point of contact (i.e. arrest) through to the adjudication process to disposal and continuing whilst they have contact with the formal system. This independent advocate should ensure that young people are informed and understand the processes in which they are involved at all times, are

supported to participate in these processes and empowered and assisted to make complaints where necessary.

- Children should have the right to complain to an open, transparent, accessible and effective complaints process.
- Complaints systems must be independently monitored through the Criminal Justice Inspectorate Northern Ireland (CJINI) and **Regulation and Quality Improvement Authority (RQIA)**.
- The Youth Justice Review Team should revisit the recommendations from the Criminal Justice Inspectorate Northern Ireland (CJINI) 2008 report regarding the complaints procedures at Woodlands Juvenile Justice Centre (JJC) and affirm their implementation.
- Children and young people deprived of their liberty should have the right to make complaints to an identifiable, impartial and independent body.