

## **Response to the Department of Justice's consultation on the Report of the Review of the Youth Justice System in Northern Ireland**

**30 December 2011**

### **Summary**

1. In summary, the Equality Commission welcomes many of the recommendations set out in the report on the review of the youth justice system in Northern Ireland.
2. We particularly welcome the recommendations aimed at improving the overarching strategy across Government for developing and delivering services to children and young people in Northern Ireland with the aim of promoting social inclusion, preventing offending, delivering better outcomes for children and facilitating the transition to adulthood.
3. In addition, we welcome the recognition in the report of measures aimed at improving services for particular groups of young people, including children with mental health needs; together with the recommendation relating to the need to address as a matter of urgency, the paucity of high quality statistical data and research across and beyond the criminal justice system.
4. We make a series of recommendations. For example, we recommend that:-
  - training for the police includes training on the principles and provisions of the UNCRC, challenges negative and prejudicial attitudes towards children and young people

and raises awareness of the particular issues and barriers experienced by children and young people covered by a number of Section 75 groups;

- complaints collated and reported on by the Police Ombudsman are monitored across the Section 75 groups;
- training for professionals working in the youth justice includes raising awareness of **all** of the provisions of the UNCRC, as well as **other** international obligations which impact on children and young people, including Article 7 (children with disabilities) of the UNCRPD;
- in bringing forward agreed recommendations from this review, the Criminal Justice Delivery Group sets out clearly how the recommendations will be implemented, how implementation will be monitored and progress evaluated; that agreed recommendations are progressed without undue delay; and there is effective consultation and engagement with children and young people.
- that the review of the youth justice system together with the proposed strategies and actions plans flowing from its recommendations, recognises and are under-pinned by, the general principles set out in the UNCRC;
- additional steps are taken to ensure the collection and collation of reliable, consistent and comprehensive statistical equality data on children and young people, including those with multiple identities;
- consideration is also given to the UNCRPD ; in particular, Article 7 (children with disabilities);
- the extension of equality legislation to cover discrimination by public authorities and others, including those in the criminal justice field, so that unjustifiable age discrimination outside employment is prohibited against people of all ages.

## **Context**

5. The Equality Commission for Northern Ireland welcomes the opportunity to respond to this consultation. Further details on the scope of the Commission's remit, duties and expertise is contained in Annex 1. The Commission has only responded to those questions most relevant to its remit and experience.

## **Comments**

### **Early intervention (Chapter 3)**

6. The Commission agrees with the overall analysis in this section of the report. In particular, we support the recommendation that as part of a revised and reinvigorated Children's Strategy, the Northern Ireland Executive should develop an early intervention and prevention strategy to be delivered locally through the Children and Young People's Strategic Partnership. This measure is in line with the recommendation of the UN Committee on the Rights of the Child in its General Comment No.10 on children's rights and juvenile justice.<sup>1</sup>
7. We also welcome the proposed establishment of an Early Intervention Unit; an interdepartmental unit designed to co-ordinate policy and ensure priority is given to early intervention across all relevant government Departments.

### **Policing (Chapter 3)**

8. In general, we welcome the recommendations outlined in the report in relation to the police, including; the raising of priority afforded to children and young people in their planning processes; the development of an appropriate skills package for all officers on engaging with children and young people; and modelling best practice in interacting with young people to increase trust and minimise offending.

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<sup>1</sup> UN Committee on the Rights of the Child, General Comment no 10 (2007) Children's Rights in Juvenile Justice <http://www.unhcr.org/refworld/docid/4670fca12.html>

9. We recommend that training for the police includes training on the principles and provisions of the UN Convention on the Rights of the Child (UNCRC). In addition, we note that the report highlights that ‘too many officers are still adopting a judgemental and prejudicial, even antagonistic, attitude towards some of the young people they encounter’. In line with the recommendations of the UN Committee on the Rights of the Child, we recommend that the training challenges negative and prejudicial attitudes towards children and young people and the opportunity is taken to promote positive attitudes towards children, especially adolescents.
10. We further recommend that the proposed skills package and adoption of best practice in terms of interaction, raises awareness of the particular issues and barriers experienced by children and young people covered by a number of Section 75 groups; as well as how best to build trust and confidence and effectively engage with these particular groups; for example, Protestant and Roman Catholic children and young people<sup>2</sup>, black and minority ethnic (BME) children and young people<sup>3</sup>, lesbian, gay and bisexual (LGB) children and young people, and disabled children and young people.
11. We also welcome the recommendation to remove legal obstacles to developing robust and locally-based complaints procedures to help young people raise concerns whilst maintaining the right of unimpeded access to the Police Ombudsman.
12. We note the report highlights that the lack of prioritisation by the police is compounded by the ‘Police Ombudsman’s practice of not routinely encouraging, facilitating, collating or reporting on

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<sup>2</sup> We note, for example, the findings in the report that there is a **perception** of bias by the police in both Protestant and Roman Catholic communities.

<sup>3</sup> We note, for example, the research report commissioned by NICEM, *The next Stephen Lawrence? Racist violence and Criminal Justice in NI*, highlighted that “while clear and positive attempts had been made to build relationship with minority ethnic communities and organisations, the research identified a widespread alienation from the PSNI.”

[http://www.nicem.org.uk/uploads/publications/the\\_next\\_Stephen\\_report.pdf](http://www.nicem.org.uk/uploads/publications/the_next_Stephen_report.pdf)

complaints by young people under the age of 16'. We agree that the Police Ombudsman should encourage young people to voice their concerns and that these are properly recorded and fed back to the PSNI.

13. We recommend that complaints collated and reported on by the Police Ombudsman are monitored across the Section 75 groups; for example, complaints by disabled children and young people, black minority ethnic children and young people, LGB children and young people, etc.

### **Diversion and prosecution (Chapter 3)**

14. We support the recommendation that in order to comply with the new principal aim of the youth justice system (i.e. to reflect the best interest principles of the child), that the Public Prosecution Service should incorporate Article 3 of the UNCRC into its Code of Practice.
15. The proposal is also in line with Article 7 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which states that 'in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.'
16. We also support the recommendation that all professionals working in the youth justice system, including defence solicitors, should receive appropriate training to reflect the new aim.
17. We note that the UN Committee on the Rights of the Child recommends that the UK further strengthens its efforts to ensure that all of the provisions of the UNCRC are widely known and understood by adults and children alike. It specifically recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, including law enforcement officials.
18. We recommend that in taking forward this training, the opportunity is taken to raise awareness of **all** of the provisions of the Convention; as well as an opportunity to promote positive attitudes towards children and young people. This is also in

line with the recommendations of the recent report on *Barriers to Effective Government; Delivery for Children in Northern Ireland* commissioned by NICCY which calls for the development of a systematic training programme on the UNCRC.<sup>4</sup>

19. In addition, we recommend that such training includes raising awareness of **other** international obligations which impact on children and young people; for example, Article 7 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD); as well as Article 13 of the UNCRPD on access to justice and Article 14 of the UNCRPD on liberty and security of the person.

### **Special groups (Chapter 3)**

20. We support the recommendation that all agencies working with children and young people should improve their understanding of special needs and the impact these have on those specific groups over-represented in the youth justice system and in custody.
21. We further support the recommendation that the DHSSPS should lead in developing better assessment, inter-agency information exchange and cross-referral mechanisms alongside more specialised interventions.
22. We welcome the fact that the review has considered particular problems and concerns facing vulnerable children and young people including looked-after children, children with mental health needs together with a consideration of issues facing other Section 75 groups, such as LGB and transsexual young people.
23. We welcome that the report has highlighted the need for specific attention to be paid to the risks faced by children with

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<sup>4</sup> *Barriers to Effective Government, Delivery for Children in Northern Ireland*, commissioned by the Northern Ireland Commissioner for Children and Young People, QUB, November 2011 [www.niccy.org](http://www.niccy.org)

mental health or substance misuse problems and that appropriate measures are put in place to minimise them. We note with concern the findings of the review which indicates that “as with many other areas of policy and practice, children’s mental health issues have been addressed in a fragmented way across criminal justice, care, mental health and education rather than through a single, joined-up strategy.”

24. The review’s recommendations are in line with the CJI report into *Mental Health and the Criminal Justice System in Northern Ireland* in 2010; which made a series of recommendations in relation to a number of criminal justice agencies as well as health care bodies, in order to ensure appropriate services are delivered for offenders and prisoners with mental health problems.<sup>5</sup>

#### **Strategic and practical arrangements (Chapter 4)**

- **OFMDFM Children’s Strategy**

25. In general, the Commission supports the recommendations set out in Chapter 4 as regards the strategic and practical arrangements for effective delivery.
26. In particular, we welcome the recommendation that the First and Deputy First Ministers should reconfirm the Government’s commitment to children and young people through the establishment of a Ministerial Committee comprising the Ministers of Education, Health & Social Services, Social Development and Justice as its core members.
27. In addition, we support the recommendation that the Children and Young People’s Strategic Partnership (CYPSP) should become the strategic, multi-agency forum through which regional and local priorities are agreed. We agree with the note of caution highlighted in the report that ‘care will need to be taken to ensure that these arrangements do not add more

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<sup>5</sup> <http://www.cjini.org/CJNI/files/24/24d6cd45-20bb-4f81-9e34-81ea59594650.pdf>

bureaucracy and that they delivery real and tangible benefits on the ground.’

28. We note the concerns raised in this report in relation to the impact of the OFMDFM ten year Children’s Strategy, including the finding that ‘it is difficult to determine, five years in, what the Strategy has achieved in practice’, and the recognition that there is ‘a clear need to re-energise and re-launch the strategy, to make it more relevant and give it greater focus.’
29. We note that a recent independent report commissioned by the Northern Ireland Commissioner for Children and Young People (NICCY), *Barriers to Effective Government, Delivery for Children*<sup>6</sup>, published after the report on the Review of the Youth Justice System, highlighted similar concerns. In particular, it highlighted, as regards the second Children & Young People’s action plan covering the period 2008/2011, that many actions set out therein had not been achieved within the designated timescales or had not been met at all.
30. We support the conclusions in the report that there needs to be a clear and strategic plan of action across all relevant Departments, and that the appropriate mechanism to achieve this is the Programme for Government which allows Ministers to establish shared priorities around early and universal support for children and families and to direct resources accordingly.
31. In general, the Commission supports measures to ensure greater collaboration and effective working between Departments and other key stakeholders in bringing forward a clear and strategic plan of action. In addition, it is important that actions taken pursuant to a revised and reinvigorated Children’s Strategy are effectively monitored and evaluated through a robust monitoring framework and that clear **outcomes** for children and young people are identified.

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<sup>6</sup> *Barriers to Effective Government, Delivery for Children in Northern Ireland*, commissioned by the Northern Ireland Commissioner for Children and Young People, QUB, November 2011  
[www.niccy.org](http://www.niccy.org)

32. In line with recommendations of the UN Committee on the Rights of the Child<sup>7</sup> we are of the view that the UN Convention on the Rights of the Child (UNCRC) should be **used as a framework** for the development of a revised Children & Young Person's Strategy and that the Strategy pays particular attention to children belonging to the most vulnerable groups.

- **Implementation of review recommendations**

33. We support the recommendation that the Criminal Justice Delivery Group should develop a strategic interest in youth justice and, together with the Criminal Justice Board and the Ministerial Children's Committee, take overall responsibility for implementing the recommendations in this report on the review of the youth justice system.

34. We recommend that in bringing forward agreed recommendations from this review, the Criminal Justice Delivery Group sets out clearly how the recommendations will be implemented, how implementation will be monitored and progress evaluated. In addition, we recommend that agreed recommendations are progressed without undue delay in light of the wide ranging significant issues of concern raised as part of the review and the need to take remedial action as a matter of urgency.

35. Our recommendations are made in light of the findings set out in the report *Barriers to Effective Government; Delivery for Children in Northern Ireland* commissioned by NICCY, which highlighted that in relation to strategies, policies and action plans on children and young people that there are 'instances of significant time lags between the issue of consultation documents to the issue of the final document and subsequent plans for action and implementation.'

36. This report also highlighted as regard such strategies, policies and action plans, inconsistencies in their approach in terms of implementation, monitoring and evaluation of progress. Finally,

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<sup>7</sup> UN Committee on the Rights of the Child, Concluding Observations on the UK, October 2008

it raised concerns that there was ‘a failure to link various strategies with each other, as appropriate, as a means of maximising impact and outcomes for children.’

37. In addition, in taking forward the recommendations arising from this report, we recommend effective consultation and engagement with children and young people; in line with best practice recommended by the Commission’s Guidance for public authorities on consulting with children and young people.<sup>8</sup>

### **Improved data collection**

38. We support the recommendation that the Criminal Justice Delivery Group, together with the Criminal Justice Board and the Ministerial Children’s Committee, should address ‘as a matter of urgency, the paucity of high quality statistical data and research across and beyond the criminal justice system.’

39. Further to their duties under Section 75, we recommend that public authorities, including the Department of Justice and other criminal justice agencies, take action to address gaps in equality data as regards the groups covered by Section 75.

40. It is of note that in 2009, the Criminal Justice Inspection Northern Ireland (CJI) published a report *The Impact of Section 75 of the Northern Ireland Act 1998 on the Criminal Justice System in Northern Ireland*. The CJI report included recommendations aimed at the Youth Justice Agency and the Northern Ireland Prison Service, as well as the Criminal Justice Board which comprised the Heads of each of the Criminal Justice Agencies in Northern Ireland.

41. The CJI report noted, for example, that there was ‘very little equality data that tells us anything about how the criminal justice system treats defendants, victims, prisoners and witnesses’, and highlighted the need to collect robust, timely

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<sup>8</sup> *Lets Talk, Lets Listen, Guidance for Public Authorities and Consulting and Involving Children and Young People*, ECNI, 2008, [www.equalityni.org](http://www.equalityni.org)

and relevant equality information. It highlighted monitoring weaknesses in relation to each criminal justice agency, but 'most acutely across the system as a whole'.

42. Whilst we recognise that steps have already been taken to address some of these recommendations, we are of the view that further action is required. The collection and collation of reliable, consistent and comprehensive statistical data on children and young people will significantly assist public authorities in carrying out their Section 75 duties.
43. It has, for example, the potential to enable public authorities to assess the impact of criminal justice practices and procedures on vulnerable children such as disabled children, as well as children from black and minority ethnic communities (including Traveller children), looked after children and lesbian, gay and bisexual children and young people. In addition, the collection of equality data enables public authorities to assess the impact of criminal justice practices and procedures on girls and boys, as well as children from different community backgrounds.
44. The collection and collation of this equality data will enable public authorities working in the criminal justice field to assess whether children and young people experience particular barriers within the criminal justice system as defendants, victims, prisoners and witnesses. It also enables public authorities to establish benchmarks and to measure progress in addressing these barriers.

### **Children's rights and international standards (Chapter 5)**

45. We note that the report highlights that in reviewing the system against international standards, 'we have given particular weight to the European Convention on Human Rights (ECHR) and the UNCRC, where they are significant in relation to particular issues.'
46. The Commission recommends that consideration is also given to the UNCRPD ; in particular, Article 7 (children with disabilities). Article 7, for example, places obligations on the UK

to take all necessary measures to ensure that disabled children have the full enjoyment of all human rights, including rights in relation to access to justice (Articles 13) and liberty and security of person (Article 14), on an equal basis with other children. There is also an obligation on the UK to ensure that disabled children have the right to express their views freely and their views are given due weight in accordance with age and maturity.

47. We recommend that the review of the youth justice system together with the proposed strategies and actions plans flowing from its recommendations, recognises and are under-pinned by, the general principles set out in the UNCRC; including the principle of non-discrimination (Article 2), the best interests of the child (Article 3), the right to life and maximum survival and development (Article 6) and respect for the views of the child (Article 12). As set out above, we support the inclusion of the recommendations (in particular recommendation 5 and 28) aimed at incorporating Article 3 of the UNCRC to reflect the best interest principle.
48. In addition, we support the recommendation that the Justice (NI) Act 2002 is amended to reflect the best interest principle as set out in Article 3 of the UNCRC. As highlighted above, this also accords with Article 7 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which states that ‘in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.’
49. We welcome the references in the report to the impact of Section 75 of the Northern Ireland Act 1998. We note that the report highlights that “public authorities need to be reminded of their specific duty to consider the impact of their policies on children and young people as a defined group and as represented across the other groups.”
50. We support the recommendation that the Northern Ireland Executive should make it clear to all public authorities that the age category in Section 75 requires them to consider how their policies and practices impact on children and young people.

51. As highlighted in the Commission's *Guide for Public Authorities on Consulting and Involving Children and Young People*, the Commission is clear that children and young people are fully covered by Section 75.<sup>9</sup> The Commission is also clear that public authorities must take into account the impact of their policies on children and young people.
52. Whilst we welcome the recognition of the "powerful equality provisions in Section 75", we note that there is no reference in the report in relation to the lack of protection against discrimination for children as regards the exercise of public functions by public authorities or the provision of goods and services.
53. The Commission has recommended the extension of the age equality legislation to the provision of goods, facilities, services, public functions and private clubs. We have specifically recommended that this protection **extends to minors**.
54. The extension of this legislation to children would mean that public authorities, including those in the field of criminal justice, when exercising their public functions, or providing goods, facilities and services, would be prohibited from unjustifiably discriminating against children and young people (aged under 18).
55. It will be noted that under the Equality Act 2010 in Great Britain, legislation prohibiting unlawful discrimination on the grounds of age in the provision of goods, facilities and services and the exercise of public functions is to be prohibited in Great Britain in April 2012.
56. It is not proposed that this legislation in Great Britain will extend to children and young people. However, it will be noted that the Joint Committee on Human Rights in its report on children's rights<sup>10</sup> recommended that the Equality Bill be amended to

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<sup>9</sup> See footnote 8.

<sup>10</sup> Children's Rights, 25<sup>th</sup> report of 2008-09, Joint Committee on Human Rights, [www.publications.parliament.uk](http://www.publications.parliament.uk)

- extend protection from age discrimination to people regardless of their age in relation to the provision of goods, facilities and services, except where discrimination on the grounds of age can be justified.
57. We have welcomed the proposal by the Northern Ireland Executive in the draft Programme for Government to extend this legislation to Northern Ireland by 2015. Whilst we recognise that the legislation in Great Britain will not cover minors, the Commission is of the view that there is a need for children and young people to have protection against unjustifiable discrimination when accessing goods and services and public functions, **including in the area of criminal justice.**
58. Our recommendation is in line with the **guiding principle** of non-discrimination in Article 2 of the UNCRC and the **Concluding Observations** of the UN Committee on the Rights of the Child in the UK which recommended that the UK take “all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or, if necessary, penal sanctions.”
59. As set out in the publication *Children’s Rights: Rhetoric or Reality-A review of Children’s Rights in Northern Ireland 2007-08* published by NICCY, the review found examples of discrimination in terms of the provision of rights to different groups of children and young people by the State Party, and also gaps in the State Party’s efforts to protect children from discrimination emanating from the actions of others.<sup>11</sup>
60. It also highlights that the protection afforded to children and young people is also limited by the “*hierarchy of protection*” within Northern Ireland equality law, in which discrimination on the grounds of age receives least protection.

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<sup>11</sup> <http://www.niccy.org/article.aspx?menuId=4622>

61. In summary, we recommend the extension of the equality legislation, so that public authorities and others, including those in the criminal justice field, are prohibited from discriminating unjustifiably on the grounds of age, including against children and young people, in the provision of goods and services, and the exercise of public functions.

### **Minimum age of criminal responsibility (Chapter 5)**

62. We note the recommendation that the minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14.

63. We agree, as highlighted in the report, that the issue of at what minimum age a child should be held criminally liable for their behaviour, is a matter of considerable public interest. We also recognise the sensitive and controversial nature of the issue. It is important that there is an informed public debate on this issue and any recommendations reflect robust evidence in this area.

64. We further note that the UN Committee on the Rights of the Child has recommended that the UK raise the minimum age of criminal responsibility in accordance with the Committee's General Comment No 10. We note, in particular, that it recommends that State parties are encouraged to increase the minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

### **Conclusion**

65. In conclusion, we welcome many of the recommendations set out in the report on the review of the youth justice system in Northern Ireland. The recommendations, if implemented, have the potential to have a significant positive impact on the experiences of children and young people in the youth justice

system. We have highlighted above a range of recommendations for consideration by the Department of Justice in bringing forward the recommendations in this report.

**30 December 2011**

## **Annex 1: The Equality Commission for Northern Ireland – Remit**

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
  - working towards the elimination of discrimination;
  - promoting equality of opportunity and encouraging good practice;
  - promoting positive / affirmative action
  - promoting good relations between people of different racial groups;
  - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
  - keeping the legislation under review;
  - promoting good relations between people of different religious belief and / or political opinion.
4. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with

promoting, protecting and monitoring implementation of  
UNCRRPD in Northern Ireland.