



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Response to a Review of the Youth Justice System in Northern Ireland

Summary

This response advocates the development of a comprehensive youth justice policy that is set within a legal framework, embedding the principle of imprisonment as a last resort and the principle of the best interests of the child, as required by international human rights law. We advise immediate action to raise the minimum age of criminal responsibility from 10 to 12 years. We advise that further consideration is given to raising the age in line with international standards and best practice. Other issues we highlight include:

- the need to address the high levels of remanded children and to develop appropriate accommodation to reduce to an absolute minimum the use of Woodlands as a place of safety under PACE
- further development of restorative mechanisms both as an alternative to the criminal justice system and custody; the need to tackle the serious problem of delay in dealing with cases within the youth justice system, including further consideration of introducing statutory time limits
- the need to end the practice of allowing courts to send children to Hydebank YOC, with arrangements put in place to manage their transition to Woodlands JJC
- 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
- budgetary allocations need to be prioritised to ensure that international obligations and best practice are met in relation to young people in need, or at risk, and
- a robust oversight mechanism is required to ensure implementation of the Youth Justice Review.

Main response

1. The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69(1) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.¹ In accordance with this function the following statutory advice is submitted to the Department of Justice on the Review of the Youth Justice System in Northern Ireland.
2. The Commission welcomes the comprehensive Review of the Youth Justice System in Northern Ireland (hereafter the Review) and is pleased to note the references to international obligations in the area of youth justice.

Diversion and prosecution

Principal aim of the youth justice system

3. The consultation document at para 9 'Diversion and prosecution' refers to recommendations made in the Review that the aims of the youth justice system should reflect the best interests principles as outlined in Article 3 of the UN Convention on the Rights of the Child (UNCRC). In respect of meeting international obligations as to the aims of the youth justice system, Article 3 of the UN Convention on the Rights of the Child (UNCRC) provides that:

[...] in all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

4. In the context of criminal justice, the Committee on the Rights of the Child in its General Comment No 10 elaborates on this principle, stating:

Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the

¹ *Northern Ireland Act 1998, s69(1).*

traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.²

5. While commending the UK Government for efforts to harmonise its legislation with the Convention on the Rights of the Child, the UN Committee was clear that “the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, *especially in the area of juvenile justice*” (emphasis added).³ The Committee urged the UK to rectify this and to fully implement international standards pertaining to youth justice. The Commission submits that this principle is not appropriately reflected in the legislative and practice framework in Northern Ireland.
6. With reference to the consultation document at para 18.3, **the Commission advises that the Minister for Justice implements the recommendation of the Review, that Section 53 of the Justice (NI) Act 2002 (the aims of the youth justice system) should be amended to fully reflect the best interest principles as espoused in Article 3 of the UNCRC (rec 28).**
7. With reference to the consultation document at para 9.3, **the Commission advises that the Minister for Justice implements the recommendation of the Review that the PPS should incorporate Article 3 into its Code of Practice and that all professionals working in the youth justice system should receive appropriate training (rec 5).**

Bail and remand

Overuse of remand

8. The Commission is concerned at the high levels of remanded children, including PACE placements that appear to be on the increase.⁴ This follows significant decreases in previous years. There also remains a large discrepancy

² Committee on the Rights of the Child (2007) *General Comment No 10 (2007) Children's Rights in Juvenile Justice*, CRC/C/GC/10, 25 April 2007, para 10.

³ Committee on the Rights of the Child, *Concluding Observations on the UK's third and fourth periodic report*, 3 October 2008, CRC/C/GBR/CO/4, paras 10 and 26.

⁴ Information collated from the Youth Justice Agency's Annual Reports (2004 to 2010) all available:
http://www.youthjusticeagencyni.gov.uk/publications_library/.

between the number of children who are detained on remand and those who go on to receive a custodial sentence.

9. In its 2008 inspection report of the Juvenile Justice Centre, the Criminal Justice Inspection observed that children were placed in custody “as much for their own safety as in response to their offending behaviour”.⁵ This suggests that practice is not compatible with Article 37(b) UNCRC, which requires the use of imprisonment of children as a measure of last resort. The inappropriate use of custody is also indicative of the urgent need to develop a system of support for children who are in conflict with the law that is based on the principle of the best interest of the child and utilises child-centred interventions in the community.
10. While noting the positive comments in the Review regarding Woodlands Juvenile Justice Centre, the Commission remains concerned at the overuse of remand, an issue that we brought to the attention of the UN Committee on the Rights of the Child in May 2008.⁶
11. The consultation document at para 10 ‘Bail and remand’, summarises issues raised by the Review in relation to the disproportionate number of children remanded to custody. The Review further recommends that to ensure custody is a measure of ‘last resort’ there should be a general presumption of bail without conditions.
12. In its 2008 Concluding Observations (at page 19, para 77), the UN Committee on the Rights of the Child noted the high number of children on remand and recommended that the Government implement the principle that children are detained as a ‘last resort’ and for the shortest possible period (as required by Article 37(b) of the UNCRC).
13. **The Commission therefore advises that the Minister for Justice implements the Review’s recommendation that there is “the development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of Woodlands as a place of safety under PACE” (rec 8).**

⁵ Criminal Justice Inspection Northern Ireland (2008) *Inspection of Woodlands Juvenile Justice Centre, May 2008*, Belfast: CJINI.

⁶ NIHRC Submission to the United Nations’ Committee on the Rights of the Child, May 2008.

Youth Conferencing

14. Para 11.2 of the consultation document summarises the Review's findings in respect of a need for "fine tuning" of Youth Conferencing initiatives. The Youth Justice Review Team has noted the strengths of youth conferencing and other restorative practices, which can "[...] offer an inclusive, problem-solving and forward looking response to offending".⁷ However, the Review Team and other analyses have identified a number of concerns including:
- **Informed consent:** the initial evaluation of the youth conference service raised concerns about whether there is a proper opportunity to provide free and informed consent to attend a youth conference particularly where the young person is asked to consent during the court process.⁸
 - **Proportionality:** it is notable that the length of conference plans is increasing and that a number of plans were noted by the Youth Justice Review Team to have too many and, at times, inappropriate requirements.⁹
 - **Police attendance:** unlike restorative justice systems in other jurisdictions (for instance, New Zealand; Australia) where there is discretion to decide if a police officer should attend the restorative conference, a police officer must attend all youth conferences in Northern Ireland. Recent research has found that some young people who participate in conferences report long histories of negative interactions with the police.¹⁰ While acknowledging that the presence of the police may in some instances result in a positive conference experience, it can also contribute to power imbalance and a perception by young people that they are required to accept the outcomes of the conference.
15. The UN Committee on the Rights of the Child has recommended that States Parties develop and implement restorative mechanisms both as an alternative to the

⁷ Department of Justice NI (2011) *A Review of the Youth Justice System*, p59.

⁸ Campbell C, Devlin R, O'Mahony D, Doak J, Jackson J, Corrigan T, and McEvoy K (2005) *Evaluation of the Northern Ireland Youth Conference Service*, NIO Research and Statistical Series: Report No 12, October 2005, Recommendation 4.

⁹ Department of Justice NI (2011) *A Review of the Youth Justice System*, p62.

¹⁰ Maruna S, Wright S, Brown J, van Marle F, Devlin R and Liddle M (2007) *Youth Conferencing as Shame Management: Results of a Long-Term Follow-Up Study*, ARCS (UK) Ltd, p57.

criminal justice system¹¹ and custody.¹² Youth conferencing therefore has the potential to promote respect for the human rights of children in conflict with the law in Northern Ireland. However, any system of restorative justice must be appropriate to the child's "well-being and proportionate both to their circumstances and the alleged offence" (Article 40(3)(b) UNCRC).

16. Various international human rights instruments exist that relate to restorative justice and should therefore inform the operation of restorative mechanisms in Northern Ireland. As well as the UN Convention on the Rights of the Child and the Committee's General Comment No 10 on children's rights in juvenile justice, these instruments include:
 - UN Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules)
 - UN Minimum Rules for Non-Custodial Measures, 1990 (the Tokyo Rules)
 - UN Guidelines on the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines)
 - UN Guidelines for Action on Children in the Criminal Justice System, 1997 (the Vienna Guidelines), and
 - UN Basic Principles on the use of Restorative Justice Programmes in Criminal Justice, 2002.
17. Article 15 of the Vienna Guidelines for Action on Children in the Criminal Justice System states that alternative measures should comply with relevant international standards, and pay " [...] special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention". The UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters provide for *inter alia* the principles of free and informed consent (principle 7), the need to account for disparities leading to power imbalances (principle 9), and the requirement for fundamental procedural safeguards (principle 13).
18. **The Commission advises that the Minister for Justice implements the recommendations of the Review to**

¹¹ For example, see the UN Committee on the Rights of the Child (2007) *Concluding Observations: Mali*, 3 May 2007, CRC/C/MLI/CO/2, para 70.

¹² For example, see the UN Committee on the Rights of the Child (2005) *Concluding Observations: Algeria*, 12 October 2005, CRC/C/15/Add 269, para 82; UN Committee on the Rights of the Child (2005) *Concluding Observations: Yemen*, 21 September 2005, CRC/C/15/Add 267, para 77.

maximise victim participation (rec 10a); to ensure outcomes are proportionate (rec 10b), and to reduce time from arrest to conference disposal (rec 10c). The Commission also refers Government to the above mentioned international human rights standards and recommends that these inform the operation of youth conferencing in Northern Ireland.

Other diversionary measures

19. The Committee on the Rights of the Child has advocated the creation of appropriate interventions without resorting to judicial proceedings.¹³ Provided restorative justice schemes are safeguarded by well-structured protocols and human rights standards, they have much to offer. The Review comments that another way of “promoting greater responsibility for low level offending by children and young people outside the criminal justice system is offered by Community Based Restorative Justice” (3.5.7). It further comments that “in our view the current approach is not making sufficient use of a valuable community initiative” (3.5.7). In assessing options that provide alternative diversionary measures for children and young people in conflict with the law, it is recommended that full consideration is given to the particular contribution that community based restorative justice schemes can make in meeting rehabilitative and restorative justice objectives and diversion away from more formal criminal justice interventions. **This is in line with recommendation 6(b) of the Review to build on the “successful practices of community based restorative justice schemes”.**

20. While the Commission recognises that a number of diversionary and restorative measures and sanctions are available in Northern Ireland’s youth justice processes, it is concerned at the continuing lack of measures which would divert children in conflict with the law away from the formal criminal justice system, with limited involvement of criminal justice agencies, and focusing on addressing the often complex needs of children through education, health and social care and support to families and carers. **The Commission recommends that a comprehensive system of interventions should be developed so that such diversion and support can be delivered.**

¹³ Committee on the Rights of the Child (2007) *General Comment No 10 (2007) Children’s Rights in Juvenile Justice*, CRC/C/GC/10, 25 April 2007.

Delay

21. The Review, at para 3.9, comments on the serious problem of delay in dealing with cases across the criminal justice system. The Review comments that whilst it “cannot be certain about the reasons for adjournments in every case”, the sheer number of adjournments “suggests either a high degree of unpreparedness or a lack of determination to bring the case to a speedy conclusion” (para 3.9.1). The Review suggests that delay impacts more adversely on children than adult cases and that the level of delay engages Article 6(1) of the ECHR which states that “everyone is entitled to a fair and public hearing within a *reasonable time (emphasis added)* by an independent and impartial tribunal established by law” (para 3.9.2).
22. Article 40(2) of the UNCRC provides that every child is:
- To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence (ii); and to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians (iii).
23. The UN Committee on the Rights of the Child General Comment No 10 states that “for children in conflict with the law the time between commission of the offence and the final response to this act should be as short as possible. The longer the period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized”.¹⁴
24. With reference to the consultation document at para 13.3, **the Commission advises that the Minister for Justice implements the recommendation of the Review that “urgent attention needs to be paid to driving down the time taken for all diversionary proposals ...” (rec 13), that “work to tackle the problem of delay should prioritise young offenders ...” (rec 14), and that**

¹⁴ UN Committee on the Rights of the Child (2007) General Comment No 10: *Children’s Rights in Juvenile Justice*.

further consideration should be given to the recommendation that “statutory time limits should be introduced for all youth justice cases ...”(rec 15).

Custody

25. The consultation document at para 14 highlights concerns raised in the Review regarding the use of an adult prison establishment, Hydebank Wood YOC, to accommodate some male children. The Commission as part of its investigations and other work has continually raised this issue as an ongoing and serious matter.¹⁵
26. The Commission understands that detention of children in prison service custody may still occur in the following circumstances:
 - **Sentence:** if the young person will reach 18 years of age during their sentence and have received a custodial sentence within the last two years (Article 39 (3B) of the Criminal Justice (Children) (NI) Order 1998 as inserted by Article 96(4) of the Criminal Justice (NI) Order 2008).
 - **Remand:** young people can be remanded to the juvenile justice centre only if they are under 17 years and six months and have not received a custodial sentence in the previous two years (Article 13(1BB) of the Criminal Justice (Children) (NI) Order 1998 as inserted by Article 96 of the Criminal Justice (NI) Order 2008, and Paragraph 69(3) to Schedule 12 of the Justice (NI) Act 2002).
 - **Remand for those at risk of harm:** Article 13 of the Criminal Justice (Children) (NI) Order 1998 provides that children as young as 15 years may be remanded to a young offenders' centre if they are believed to be at risk of harming themselves or others.
 - **Transfer:** if the Director of the Juvenile Justice Centre considers that the young person is likely to injure themselves or others then she or he can apply to the court to have the young person transferred to the YOC. This can occur from age 15 years for those on remand and from age 16 years on sentence.

¹⁵ NIHRC, Submission to the Youth Justice Review, June 2011.

27. Alternatives to custody should be promoted, and children detained only as a matter of a last resort (Article 37(b) of the UNCRC). When, as a last resort, children are detained they should be held in age-appropriate accommodation. The detention of children in the YOC is contrary to the state's international human rights commitments. **For the reasons outlined above, the Commission advises that the Minister for Justice implements the Review's recommendation that: "The practice of allowing the courts to send persons under the age of 18 to Hydebank Wood Young Offenders' Centre should cease. Arrangements should be put in place to manage their transition to Woodlands Juvenile Justice Centre no later than 18 months from the publication of this report ..."(rec 16).**

Information about the numbers, regimes and treatment of children held in Hydebank Wood YOC

28. A further issue of concern is the lack of information about the numbers, regimes and treatment of children held in Hydebank Wood YOC. General comment No 10, of the UN Committee of the Rights of the Child stated:

The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, [...] the use and the average duration of pretrial detention, [...] the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency in full accordance with the principles and provisions of CRC.

29. The Commission advises that comprehensive information should be collected and published regarding the number of children held annually in Hydebank YOC (disaggregated by age), and that detailed information about the regime, treatment and outcomes for children so held be included in inspection and monitoring reports. This should include information relating to the monitoring of Care Orders of children and young people in detention and upon release.

Reintegration and rehabilitation

30. The consultation document at para 15 highlights concerns raised in the Review relating to effective reintegration and the particular problem that having a criminal record may create for a young person. The Review draws attention to the fact that “legislation of offenders is complex, out of date and should be reviewed” (para 3.11.7) and recommends that “greater priority should be accorded to the rehabilitation and re-integration of young offenders in custody ...” (rec 20).
31. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) states that prisons shall have as an essential aim the “reformation and social rehabilitation” of prisoners. Further that, “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”. The Basic Principles for the Treatment of Prisoners state that “... favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions” (UN General Assembly A/RES/45/111, para 10).
32. In relation to the particular problems that a criminal record creates for a young person the Review drawing upon the Council of Europe’s [2003] recommendation,¹⁶ states that “there should be a real possibility of having the ‘slate cleaned’ at age 18 or 21 on application by the young person” (3.11.7 (iv)). Recommending that policy and legislation “relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness” (rec 21), specific actions include:
 - (a) diversionary disposals should not attract a criminal record or be subject to employer disclosure;
 - (b) young offenders should be allowed to apply for a clean slate at age 18;
 - (c) for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open

¹⁶ Council of Europe: Recommendation 2003(20) of the Committee of Ministers concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed (rec 21).

33. The Council of Europe (2003) recommendation of the Committee of Ministers in respect of facilitating the entry of young adult offenders in to the labour market states that “every effort should be made to ensure that young offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise” (para 12). **The Commission advises that the Minister for Justice implements recommendation 20 and 21 of the Review.**

Special Groups

34. The Review highlights an over-representation in the youth justice system of a number of groups including ‘looked after children’. Article 20 the UNCRC requires that special protection and assistance be granted by the State to a child temporarily or permanently deprived of his or her family environment. Further, the Committee on the Rights of the Child has encouraged states to review its policies in order “to offer improved protection of the rights of children without parental care”.¹⁷
35. Other groups of young people, with particular issues relating to speech and language difficulties and mental health problems are also highlighted as being over-represented in the youth justice system (at para 3.12 of the Review). In respect of the latter grouping, Article 13 of the Convention on the Rights of Persons with Disabilities (CRPD) provides that:
1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

¹⁷ Committee on the Rights of the Child, 37th Session, Recommendation 7, ‘Children without Parental Care’, 10/2004.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.
36. **The Commission advises that the Minister for Justice implement recommendation 22 of the Review 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. ...”.**

Children’s rights and international standards

Minimum age of criminal responsibility

37. The consultation document at para 18 ‘Children’s rights and international standards’ refers to the Review’s recommendations in respect of the minimum age of responsibility.
38. The age of criminal responsibility in Northern Ireland, legislated for in the Criminal Justice (Northern Ireland) Order 1998, is ten. This is below the minimum recommended by the UN Committee on the Rights of the Child which is clear that any limit below the age of 12 is not internationally acceptable. Indeed, in relation to the UK, the UN Committee has recommended on three separate occasions that the minimum age of criminal responsibility be increased to between 14 and 16 years.¹⁸ The Council of Europe’s Commissioner for Human Rights made a similar recommendation in his comments to Government following his visit to the UK in 2008.¹⁹ The age of criminal responsibility in the UK was assessed as “manifestly too low” by the European Committee of Social

¹⁸ Committee on the Rights of the Child, *Concluding Observations on the UK’s third and fourth periodic report*, 3 October 2008, CRC/C/GBR/CO/4; *Concluding Observations on the UK’s second periodic report*, 9 October 2002, CRC/C/15/Add 188; *Concluding Observations on the UK’s initial report*, 15 February 1995, CRC/C/15/Add 34.

¹⁹ *Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visits to the United Kingdom* (5-8 February and 31 March – 2 April 2008) (available: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1356037&Site=COE#P97_12967).

Rights in its Conclusions XVII-2 (United Kingdom) Articles 7, 8, 11, 14, 17 and 18 of the Charter (2005).²⁰

39. The Committee on the Rights of the Child is clear that a minimum age below 12 is not internationally acceptable. **The Commission advises that the Minister for Justice takes immediate action to raise the minimum age from 10 to 12. Following this, further consideration should be given to raising the age in line with international standards and best practice. This is in line with recommendation 29 of the Review.**

Concluding comments

40. The Minister for Justice has recently confirmed appointments to a Ministerial-led Prisons Reform Oversight Group. Its terms of reference have as a primary function the oversight and implementation of those recommendations made by the Prison Review Team that fall specifically to the Department of Justice. There is a pressing need for a similar oversight mechanism to oversee the implementation of the Youth Justice Review.
41. The Committee on the Rights of the Child is clear that there is an obligation on government to “ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a *primary consideration* (emphasis added).²¹ Further that, “children, including in particular marginalised and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturn”. This underlines the need to ensure that budgetary allocations are prioritised to ensure that international obligations and best practice are met in relation to young people in need or at risk of coming in to conflict with the law.
42. In conclusion, the Commission trusts that its response will assist in the development of a comprehensive youth justice policy that is set within a legal framework embedding the principles of imprisonment as a last resort and that of the

²⁰ Available: http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UKXVII2_en.pdf.

²¹ UN Committee on the Rights of the Child (2003) General Comment No 5, *General Measures of Implementation of the Convention on the Rights of the Child*, para 51.

best interests of the child, as required by international human rights law.

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