

Comments on the Revision of General Comment No 10 (2007) – Children’s Rights in Juvenile Justice

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

Northern Ireland Youth Justice System

The NI Youth Justice System does recognise that children have a different status than that of adults and therefore has separate processes and policies for children and young people and indeed considers diversion and early intervention to be key aspects of its work. There have been significant and positive developments in the youth justice system in Northern Ireland since 1998.

Following the devolution of Justice to the NI Assembly the Minister for Justice launched the independent “Review of the Youth Justice System in NI” (YJR)¹ which was required to take into account international standards including the UNCRC. The review published its report and made 31 recommendations in September 2011, 29 of which were fully accepted. The most significant recommendations included raising the age of criminal responsibility (29), the introduction of the best interest principle in YJ legislation (28), reduce number of non-sentenced young people in custody (8, 9, 18), ensure equity between looked after and non-looked after children when entering custody (19), reduce delay and introduce statutory time limit for disposal of cases (14, 15), no children to be accommodated in Young Offenders Centre (YOC) (16) and better collaboration within the criminal justice system and across statutory agencies (22 – 25).

Regrettably the work on the YJR had not been completed and this was confirmed in December 2015 by the Criminal Justice Inspector who formally assessed that 59% of accepted recommendations had been achieved at that time.² Of the recommendations identified above only the best interests and no child accommodated in the YOC (although the necessary legislative changes have not occurred to ensure the protection of this arrangement) have been achieved.

In June 2017, the Audit Office (NIAO) published “Managing Children who Offend”³ which examined the efficiency of strategies and interventions to address offending by children undertaken by the Youth Justice Agency (YJA). Crucially the report found that the YJA

¹ A Review of the Youth Justice System, Department of Justice, 2011

² Monitoring of Progress on Implementation of the YJR recommendations, CJINI, Dec 2015

³ Managing Children who Offend, NIAO, 06 July 2017

could not, “assess their cost-effectiveness and cannot currently demonstrate that the interventions to reduce offending by young people represent value for money.”⁴

Minimum Age of Criminal Responsibility

Through devolution in the United Kingdom, England and Wales, Northern Ireland and Scotland can set their own minimum age of criminal responsibility (MACR). The age at which children can be held criminally responsible is 10 years in NI (as well as in England and Wales). In 1998, the Criminal Justice (Children) (NI) Order confirmed the age of 10 whilst removing *doli incapax*, which had allowed an assessment of maturity up to the age of 14.

There was detailed examination of the MACR as part of both the Criminal Justice Review⁵ in 1999 and again in the YJR. In an attempt to comply with the Committee’s General Comment 10 the YJR recommended that the MACR should be raised to 12 with immediate effect and then further consideration should be given to an increase to 14 within 3 years.⁶ Despite the acceptance of this recommendation by the, then Minister of Justice, there was no political consensus amongst his NI Executive and Assembly colleagues and therefore legislative change was not pursued.

There is a growing body of evidence which suggests that an individual assessment of psycho-social maturity of a young person should be undertaken before they can be held criminally responsible and indeed in 2003 the Committee of Ministers of the Council of Europe stated that:

“Culpability should better reflect the age and maturity of the offender, and be more in step with the offender’s stage of development....”⁷

However, it is recognised that this may not be a practical solution. NICCY believes that the Committee’s statement in GC 10 that, “a MACR below the age of 12 is considered by ...not to be internationally acceptable” has been viewed by some governments including the UK as an aspirational target rather than the starting point.

When examining other age related legislation in NI it becomes apparent that MACR is out of step. For example the age of sexual consent in NI is 16, the age of majority (voting) is 18, the compulsory school leaving age is 16 and the age to be eligible for jury service is 18 (which means that young people under 18 can never be tried by their peers).

NICCY recommends that the age of 12 should be removed from General Comment 10 and replaced by 16 as the MACR, which would ensure that states are in compliance with their children’s rights obligations under article 40(3)(b) of the UNCRC.

Upper Age Limit of the Juvenile Justice System

NI is compliant with Article 40 of the UNCRC in so far as there are separate rules, processes and structures for children (up to the age of 18), except as stated previously, legislation to

⁴ Managing Children Who Offend, NIAO, July 2017

⁵ Criminal Justice Review NI, March 2000

⁶ Rec 29, A Review of the Youth Justice System, Department of Justice, 2011

⁷ Draft Recommendation Rec (2003) COE, 52nd plenary session, COE, June 2003

ensure that children are never held with adults in compliance with article 37(c) remains outstanding.

Deprivation of Liberty and Custody and Pre-Trial Detention

NICCY believes that having a different age for custody and MACR may provide states with an excuse for maintaining a low MACR whilst raising the age of custody which is not acceptable.

There have been tangible improvements during the last two decades in custodial facilities and the level of care for children in conflict with the law in Northern Ireland. Article 37(b) of the UNCRC states that imprisonment and detention of children shall be used as a measure of last resort. This is still not the case in NI. In 2017/18 only 7% of young people in the Juvenile Justice Centre (JJC) were sentenced with the remaining 93% either there or remand (i.e. pre-trial detention) or under the Police and Criminal Evidence (NI) Order 1989 (PACE).⁸ PACE allows the Police Service of (PSNI) to refuse bail to a child, including on the basis that they ought to be detained in their own interests.⁹ Before the case appears in court these children are detained in a ‘place of safety’, which includes the JJC. It is NICCY’s view that in many cases these powers are being used not as a measure of last resort, but in the absence of alternative accommodation.

Regardless of a number of attempts to address the issue of inappropriate detentions to the JJC, there has been a 14% increase in the proportion of young people in custody who were looked after between 2015/16 and 2017/18 to 43%¹⁰ demonstrating no progress since the YJR recommendation in 2011.

NICCY would welcome greater clarity from the Committee with regards to the circumstances where “pretrial” detention may be necessary.

Suggestions for Further Changes to General Comment 10

Best interests

The amendment in 2015 of the Justice (NI) Act, 2002 to introduce the best interest principles as a core aim of the youth justice system in NI is welcome and to be applauded. However there is little evidence as to how this has been implemented across all the relevant criminal justice agencies.

NICCY would welcome a revised General Comment 10 including clear indicators as to how a youth justice system should provide evidence that it meaningfully upholds the best interests of the child as a core principle of the system.

Delay

The issue that most animated the YJR team was the “unconscionable” levels of delay within the Northern Ireland youth justice system. They made a clear recommendation that, “statutory time limits (STLs) should be introduced for all youth cases providing a maximum

⁸ YJA Annual Workload Statistics 2017/18, Statistical bulletin 29/2018, DoJ, Oct 2018

⁹ Article 39, Police and Criminal Evidence (Northern Ireland) Order 1989.

¹⁰ Ibid 7

period from arrest to disposal of 120 days”¹¹. They went on to state that it should be introduced in the *next* Justice Bill with full implementation a year later. Since the publication of the YJR there have been 3 Justice Acts¹² passed by the NI Assembly, none of which introduced STLs for youth justice cases. Piecemeal measures such as summons reform have been introduced and the latest available statistics from the Department of Justice (DoJ) indicate that there has been no improvement in delays for youth justice cases. Despite the fact that less youth cases are progressing to courts the median number of days taken has increased between 2015/16 and 2016/17 and indeed children are subject much longer delays than adults as outlined below:

Charged adults (69 days)	children (110 days)
Summons adults (198 days)	children (248 days) ¹³

NICCY would welcome a continued and enhanced focus in the revised General Comment of the importance of undertaking due process for children in a timely manner.

Stop and Search by Police

One of the biggest concerns of young people concerning the police is the use of stop and search. Many young people believe that they are discriminated against and treated with disrespect which may exacerbate an already tense situation. Whilst the PSNI has a clear policy commitment to children’s rights this is significantly undermined if this is the experience of young people who engage with the PSNI in routine operations. It is these experiences that shape the views of young people, their families and communities and which reduce the likelihood that a young person will have confidence in the PSNI if they are victim of crime in the future, which they are statistically more likely to be than any other group.

The question remains with regards to the purpose of stop and search operations. The PSNI reasonably suggest that the arrest and prosecution cannot be the only measure used when dealing with young people and state that prevention and deterrence, alongside supporting young people vulnerable to drug and alcohol misuse are also acceptable stop and search outcomes.¹⁴ However, the only outcome information available is arrest and in 2017/18 of the 29,882 people stopped and searched only 7% were arrested.¹⁵ Therefore, it is NICCY’s view that the assertion that stop and search is an effective policing tool that meets a range of objectives is not a plausible one. Referencing Article 16 of the UNCRC, the right to privacy, the UN Committee recommended that the UK Government

38. (b) *Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;*
 (c) *Regularly collect, analyse and publish data relating to the use of stop-and-search checks on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.*¹⁶

¹¹ A Review of the Youth Justice System, Department of Justice, 2011

¹² <https://www.legislation.gov.uk/nia>

¹³ Case Processing Time for Criminal Cases dealt with at Courts in NI 2017/18, Bulletin 28/2018, Sept 18

¹⁴ <http://www.thedetail.tv/articles/psni-urged-to-reconsider-use-of-stop-and-search-on-children>

¹⁵ Stop and search stats, 2-17/18, PSNI, May 2018

¹⁶ CO on the 5th Periodic report of the UK, UN Committee on the Rights of the Child, July 2016

NICCY would welcome inclusion in the revised General Comment of specific guidance with regard to how police services protect and respect children’s rights in all their activities, particularly stop and search.

Non-Judicial proceedings

Whilst the use of non-judicial proceedings is welcome there is concern in NI that it is not used in accordance with the criteria outlined in paragraph 27 of General Comment 10, particularly with regard to a proportionate response, recording in criminal records and access to legal advice.

NICCY would urge the Committee to remind state parties of the need to ensure that diversion and all non-judicial proceedings are undertaken in accordance with children’s rights standards and carried out by suitably trained professionals.

Rehabilitation and Reintegration and Outcomes

The purposes of any youth justice system must be prevention, early intervention, diversion and ensuring that children do not re-offend or are less likely to. In the NIAO found that there is insufficient evidence with regards to how the Youth Justice supports young people to reduce or cease offending.¹⁷

Echoing recommendations made in General Comment 5 (particularly paragraphs 45 – 50) **NICCY believes that a revised General Comment 10 should include clearer recommendations regarding data collection and must not only report on activities but also outcomes on key aspects of children’s lives such as stability, education, substance misuse, accommodation as well as re-offending.**

Youth Justice Strategy

There is clear evidence that children in conflict with the law are often extremely vulnerable and have experienced a range of adversities. It is NICCY’s view therefore that the needs of children in contact with the youth justice system can only be addressed through a broad, holistic and children’s rights compliant Children and Young People’s Strategy. Such a strategy should include specific action plans to address all issues impacting on children’s lives, including youth justice.

Therefore the **NI Commissioner for Children and Young People asks the Committee to remind state parties of the need for a strategy for all children rather than separate strategies for children living in different situations.**

Conclusion

The NI Commissioner for Children and Young People welcomes the decision of the UN Committee on the Rights of the Child to revise General Comment 10 and is pleased to have provided the above observations for the Committee’s consideration. NICCY looks forward to engaging with further work undertaken in this area.

NI Commissioner for Children and Young People

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¹⁷ Ibid 3