

TRACING THE REVIEW

DEVELOPMENTS IN YOUTH JUSTICE IN NORTHERN IRELAND 2011-2021

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EXECUTIVE SUMMARY

This report traces the development of youth justice policy in Northern Ireland since the publication of the Youth Justice Review (YJR) (2011). The report has been jointly commissioned by four organisations who work with and advocate on behalf of children and young people who have contact with the criminal justice system: The Children’s Law Centre, Include Youth, NIACRO and VOYPIC. The report authors were tasked with tracing the developments towards implementation of the Youth Justice Review’s recommendations with a specific focus from 2015 onwards, which was when the last analysis on the progress of the implementation of the recommendations was published by the Criminal Justice Inspectorate (CJINI, 2015). By this time, although a number of recommendations had been progressed, there were evident gaps in the implementation of others and a view that the momentum from the Review had waned.

In 2015 the Minister for Justice commissioned a Scoping Study that was carried out by departmental officials, and which was described by David Ford, then Minister for Justice, as building on ‘the work begun in the Youth Justice Review’. However, despite a statement to the Assembly by David Ford in 2016, noting that the Scoping Study included ‘innovative proposals’ that would ‘require a fundamental shift in how the system responds to children who offend’, this report was never published.¹ In January 2017 the Stormont Assembly collapsed, and it did not sit for a further three years. During this hiatus there was no official Ministerial policy direction in youth justice, nor any advances that would require legislative change. However, this is not to say that there were no policy developments during this period. In fact, it appears that significant policies have been progressed including a proposal for the establishment of a ‘Regional Care and Justice’ facility which envisages the integration of secure justice and welfare provision for children in Northern Ireland on one site (Department of Health and Department of Justice, 2020).

While various organisations, including the commissioners of this report have been party to some of the discussions regarding these proposals, and a public consultation on the proposed repurposing took place between October 2020 and January 2021, there is a wider concern shared by the commissioners of this report, that the overall trajectory of youth justice policy lacks transparency and strategic direction. These concerns have been raised in various responses to consultations, including most recently in relation to the proposals regarding the regional facility, by the commissioning organisations (Children’s Law Centre, 2021; Include Youth, 2021; VOYPIC, 2021) and other bodies including the Northern Ireland Children’s Rights Commissioner (NICCY, 2021) and the Northern Ireland Audit Office (NIAO, 2020).

¹ David Ford Ministerial Statement: ‘Children in the Justice System: Scoping Study.’ Northern Ireland Assembly, 14.03.16.

Furthermore, as reports from the Northern Ireland Audit Office have demonstrated, there are clear gaps in the evidence base on which policy is being formulated (NIAO, 2017, 2020). These concerns are situated within the context of the partial or non-implementation of some of the recommendations of the Youth Justice Review. One of the Review's most significant recommendations was to raise the Minimum Age of Criminal Responsibility (MACR). However, this recommendation has never been taken forward, and with a MACR of 10 years, Northern Ireland along with England and Wales, retains the lowest age of criminal responsibility in Europe. Moreover, it is evident that much of the envisaged reforms articulated in the Review, such as meaningful diversion from the criminal justice system and minimising the harmful effects of system contact, rest on the implementation of this key recommendation. Other critical areas highlighted in the Review including the need to address the over-representation of children in care and with care experience in the justice system, and the need to tackle endemic delay, remain unresolved. These issues have remained areas of concern and have formed the basis of longstanding critiques of Northern Ireland's compliance with international children's rights standards (Brown, 2020; Haydon, 2020; NIHRC, 2020).

Key Findings

The report is based on analysis of key documents and interviews with a broad range of stakeholders. The research on which the report is based was conducted over a 12-month period (March 2020- March 2021). We identify key areas that fall short of compliance with children's rights standards, and that there is evidence of policy drift in youth justice in the intervening years. There have been gaps in the implementation of the recommendations of the Youth Justice Review and a concern regarding the basis of significant policy developments in the absence of sufficient data and public scrutiny.

1. Compliance with Children's Rights and Human Rights standards

The United Nations Convention on the Rights of the Child, and a range of youth justice specific children's rights standards, provide clear guidance on what is required to achieve rights compliance in youth justice. The incorporation of the UNCRC and the application of these principles in practice would provide a basis for achieving the ambitions of the Youth Justice Review.

2. Realising the ambitions of the Youth Justice Review

The commitment to undertake the Youth Justice Review arises from the Hillsborough Agreement, and as such is part of an international peace agreement. The Youth Justice Review made a series of recommendations, but these were only partially

implemented, and some of the most significant recommendations including raising the Minimum Age of Criminal Responsibility have not been taken forward. Raising the MACR to an appropriate level, which the UNCRC has now stated should be 16, to ensure children's rights compliance, is a necessary reform on which many other fundamental changes within the system rest.

3. Developing an evidence base

There are clear gaps in data in the youth justice system. There is no clear evidence about the impacts of interventions or longer-term outcomes. As the Northern Ireland Audit Office notes, the proposals to develop a Regional Care and Justice campus rest on several claims that lack sufficient underpinning evidence.

4. Mission Creep in Youth Justice

There is evidence of 'mission creep' in youth justice, particularly in the sphere of early intervention. A body of persuasive research evidence shows that the best outcomes for young people can be achieved when their needs and behaviours are responded to outside of the criminal justice system. It follows therefore that a range of non-criminal community-based preventative programmes should be developed, resourced, and supported, to ensure young people do not come into the fringes of the criminal justice system. The Youth Justice Agency should act as signpost to community-based services and ensure their move towards early intervention work does not draw more young people into having contact with the justice system.

5. Transparency in policymaking

There has been a lack of transparency in policymaking in youth justice. Some of the key underpinning documentation and rationalities, which have informed significant policy proposals and developments (e.g., the Scoping Study), have not been subject to public scrutiny. There needs to be a commitment to ensuring transparency in policymaking that meaningfully consults with and incorporates the perspectives of children and young people and the wider sector involved in this area.

Report Structure and Recommendations

The report begins with a brief background to the Youth Justice Review and its recommendations before describing the methods adopted to trace progress in specific areas from 2015 onwards, and the profile of children in the youth justice system. The report focuses on the following areas:

- Minimum age of criminal responsibility
- Policing (Police engagement)

- Early intervention
- Diversion and delays
- Bail, remand and use of custody
- Criminal records

A summary of the main findings in relation to each of these areas and specific recommendations are outlined below:

Minimum Age of Criminal Responsibility

The recommendation to raise the MACR is one of the key elements of the Youth Justice Review that has remained unimplemented. Northern Ireland's MACR of 10 years is one of the lowest in Europe and in clear contravention of children's rights standards. The lack of political consensus on this issue has been identified as the key barrier to progressing this recommendation, with many noting that MACR is a 'special issue' in Northern Ireland. Our analysis suggests that the focus on early intervention and diversion appears to have softened the drive to implement Recommendation 29 and comply with international standards. This issue cannot, however, be side-lined or softened. The NI Executive have a duty to comply with UNCRC obligations and a public responsibility for the issue to be debated. Raising the MACR to an appropriate level, which the UN Committee on the Rights of the Child now state should be 16, will have an impact on all aspects of the system and remove significant numbers of children from the realm of youth justice.

RECOMMENDATIONS

The UNCRC has now recommended that the minimum age of criminal responsibility should be 16 years.² The Executive should ensure that the MACR is raised to achieve compliance with international children's rights standards as a matter of urgency.

Policing (Police Engagement)

That there were programmes of youth engagement, various strategies, and committees in development or underway may be one reason why the CJINI (2015a) assessed aspects of YJR Recommendation 4 on policing of children and young people as 'achieved'. However, progress since has been slow and piecemeal, with

² In its 2008 recommendations, the Committee concluded that: "a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable". The Committee recommended the age of 12 "as the absolute minimum age" and that State parties should "continue to increase it to a higher age level" such as 14 or 16 and the then Chair of the Committee, when delivering the CLC's 2008 Annual Lecture, recommended the raising of the minimum age of criminal responsibility in this jurisdiction. In 2016, the Committee again urged the UK government to "raise the minimum age of criminal responsibility in accordance with acceptable international standards".

some initiatives ceasing to operate. Furthermore, additional concerns regarding the extent to which policing in Northern Ireland falls short of children's rights standards have been raised by the UN Committee on the Rights of the Child (2016). Evidently, a range of initiatives are again underway to raise the profile of children and young people as a priority in policing, to enhance positive engagement and build confidence and trust, and to raise awareness of complaints procedures. However, as documented much of this is still in the development stage, yet to be rolled out or embedded. The pattern of delay, or dropping off the agenda, suggests that children and young people are not prioritised at an organisational level. The Review's observation that '... the police could learn from young people by listening more to them and prioritising their concerns' (YJR, 2011: 40) has progressed in little strategic way in the past ten years. New relationships with the Education Authority hold promise, but this will require evaluation of the *impacts* of training, engagement activities and child and youth consultation, on the ground. A range of issues raised indicate that much more needs to be done by the PSNI and the various policing oversight bodies to achieve compliance with children's rights.

RECOMMENDATIONS

- **The PSNI should fully implement all aspects of Recommendation 4 of the Youth Justice Review.**
- **The PSNI should ensure full compliance with the recommendations of the UN Committee on the Rights of the Child with regards to policing.**
- **PSNI policy and practice should reflect all aspects of the UNCRC, to ensure child's rights compliant policing.**
- **The NI Policing Board and the PSNI should dedicate resources and capacity to ensure there is a renewed focus on children and young people's experience of policing and that the PSNI are held accountable for non-child's rights compliant practice.**
- **The PSNI at all levels should receive training in children's rights. This training should be repeated on a regular basis.**
- **The PSNI should ensure that training on youth engagement and participation is rights' compliant.**
- **The PSNI should conduct meaningful engagement with children and young people, key stakeholders, community, and voluntary sector, resulting in direct change to policy and practice. The impacts of engagement on children's confidence in policing, on policy and practice, and rights compliant policing should be effectively monitored and evidenced.**
- **The PSNI and the NIPB should comply with their Section 75 duty, including directly involving children and young people from all the Section 75 categories in decision-making forums. These should include those who disproportionately come into contact with the law.**

- **The PSNI should comply with their Section 75 duty to collect data to enable effective monitoring and oversight.**
- **The NIPB should address disproportionate use of stop and search powers on children and young people.**
- **The Police Ombudsman's Office should ensure the complaints process is accessible to children and young people.**

Early Intervention

Since the Youth Justice Review there has been significant development in a range of early intervention provision through the EITP. However, the funding for this initiative is reaching an end, and there are concerns about the sustainability of projects, particularly those delivered by the third sector. There is a strong view across many sectors that the effects of this early intervention work have yielded positive results for children and families, and some evidence to support this. However, the evidence base in respect of early intervention could be much more robust. The Youth Justice Agency credit early intervention work with a reduction in the numbers of young people entering custody. However, the Northern Ireland Audit Office have critiqued the general lack of data within the youth justice system, which means that the impacts of interventions cannot be meaningfully assessed. Caseload data indicates that the Youth Justice Agency is carrying out work framed as 'early intervention', but a range of research evidence points to the fact that early intervention is best positioned outside of the justice system if the intention is to avoid the impacts of stigmatisation and the negative effects of system contact.

RECOMMENDATIONS

- **The Executive should ensure that a comprehensive Early intervention Strategy is at the heart of the Programme for Government, is adopted as a cross-departmental commitment and is properly resourced.**
- **The Executive should ensure that cross departmental early intervention work gives effect to the statutory duty to co-operate, as outlined in the Children's Services Co-operation Act.**
- **The Executive should ensure that voluntary and community sector providers, including those in the children and the youth sector, are adequately resourced to conduct early intervention work with 0-18 years old age group.**
- **The Executive should ensure that investment in early intervention should include mechanisms to evaluate impacts over time.**

Diversion and Dealing with Delay

The issue of delay was one of the most serious issues identified by the Youth Justice Review. A proposal to introduce a statutory time limit to address delay was never taken forward. Youth Engagement Clinics (YECs) were established as means to deal with young people more quickly and to divert them from the Court system, which was a major source of delay. The YECs have addressed issues of delay to an extent, but they are not truly diversionary in the sense that young people are still processed through the youth justice system and acquire a criminal record as a result. Furthermore, the lack of uptake of legal representation raises concerns about children's rights. Despite the reduction in the numbers of young people being processed through the courts issues of delay persist and have even become more problematic since 2015.

RECOMMENDATIONS

- **Criminal justice bodies and the Department of Justice should give effect to recommendations 6,7,10,13,14 and 15 of the Youth Justice Review and the recommendations from the UN Committee on the Rights of the Child in relation to delay³.**
- **The Department of Justice should urgently address the introduction of statutory time limits for all youth justice cases.**
- **Diversion should mean diversion away from the justice system and the development of non-criminal justice responses.**
- **The Department of Justice should ensure children's right to a fair trial including in relation to all diversionary disposals and youth engagement clinics.**
- **The Executive should take steps to support community and voluntary sector to develop and deliver a full range of non-criminal justice restorative practice.**

Bail, Remand and use of Custody

The overuse of remand and the placement of children into custody under PACE provisions remain areas of concern. While the overall numbers of young people in custody have declined, there is continued over-representation of some groups, specifically Looked After Children. The recommendations of the Review concerning the development of alternatives to custodial remand have not been advanced, and such lack of alternatives remain a fundamental weakness in provision. Young people are no longer detained in adult prisons in practice, but there is no legislative

³ Criminal Justice bodies here refers to the range of bodies involved in the delivery of these recommendations. This includes the Youth Justice Agency, Public Prosecution Service and the PSNI.

provision against a young person being placed in an adult prison if there was considered an exceptional basis for doing so.

RECOMMENDATIONS

- **The Executive, key government departments and criminal justice bodies should give effect to recommendations of Youth Justice Review (8,9,18,19) and those from the UN Committee on the Rights of the Child in relation to bail, remand and the use of custody.**
- **The Executive, key government departments and criminal justice bodies should ensure compliance with children's rights standard that custody should only be used as a measure of last resort.**
- **Health and Social Care Trusts should discharge their statutory duty to provide suitable and appropriate accommodation to enable young people to perfect bail.**
- **The Youth Justice Agency should evaluate the impact of bail information schemes in order to ensure that they are meeting the needs of children and young people and reducing the use of custody.**
- **The Executive and key government departments should take urgent steps to address the over representation of certain groups in custody, including care experienced young people, those with mental health needs, those with special educational needs and disabilities and Catholic young people.**
- **The Executive should introduce legislation to ensure that no child could ever be detained in the prison system.**

Criminal Records

It is evident that there is still some distance between the recommendations of the Youth Justice Review, which advocated that diversionary disposals should never be subject to disclosure and the establishment of a process allowing for people to 'wipe the slate clean' in relation to juvenile offences (with some safeguarding exceptions), and the system which has evolved over the period since the Review. The concerns articulated in the Review, regarding the potential contradictory rationales of diversionary disposals ostensibly aimed towards reducing the impact of system contact and a criminal record regime oriented towards public protection, have not been resolved. Furthermore, the system as it has evolved is complex and there are concerns regarding children's' (and their parents, guardians and advocates') understanding of these processes and therefore the implications concerning informed consent for particular disposals. The system in Northern Ireland contrasts with most European countries, where records for juvenile offending are never disclosed and/or are sealed and it remains in contravention of children's rights standards which advocate such an approach.

RECOMMENDATIONS

- **The Executive should bring forward legislation to give effect to all aspects of recommendation 21 of the Youth Justice Review and recommendations of UN Committee on the Rights of the Child, in relation to criminal records.**
- **In particular this includes recommendation 21a of Youth Justice Review to ensure diversionary disposals do not attract a criminal record or be subject to employer or more general disclosure.**
- **The Department of Justice should develop an awareness raising programme with young people to ensure understanding of criminal records processes and arrangements for filtering.**

TRACING THE REVIEW

FULL REPORT

INTRODUCTION

The Hillsborough Agreement, which paved the way for the devolution of policing and justice powers to the Stormont Assembly, included a commitment to review the youth justice system. When appointed to the role of Justice Minister in 2010, David Ford commissioned a team to carry out a Youth Justice Review. The Review was the first examination of the youth justice system since the enactment of the Justice Act 2002, which had established the Youth Justice Agency and placed restorative justice conferencing on a statutory basis. The Review provided a comprehensive appraisal of the youth justice system in Northern Ireland. It made 31 recommendations that encompassed a wide range of areas including: early intervention and prevention, policing, youth conferencing, the need to address issues of delay, and address the over-use of remand and the over-representation children in care/with care experience in custody.

Following publication of the Review, the Department of Justice committed to implementing the recommendations and to ensuring that progress on implementation was 'monitored in a transparent manner' (CJINI, 2015: 8). To this end, the Criminal Justice Inspectorate conducted an analysis of the implementation of the Youth Justice Review in 2013, and again in 2015. The latter reported that while some of the recommendations (59%) had been advanced, others (41%) had met significant stumbling blocks, and there were signs of a loss of momentum in implementing the Review recommendations (ibid: 9). Areas in which the Inspectorate considered significant progress had been made included: embedding the 'best interests' principle into the aims of the youth justice system; the introduction of a triage approach through the development of Youth Engagement Clinics; further progression of restorative measures/ diversion; and the use of custody as last resort.

Developments in Youth Justice Post-2015

By 2015 the picture on implementation was evidently mixed and by this time the government reported that it was undertaking an internal 'Scoping Study' to establish the future priorities for youth justice. The Minister for Justice's statement to the Assembly in March 2016 regarding the elements of the Scoping Study indicated that significant work had gone into thinking about the future direction of youth justice.⁴ However, Minister Ford departed office at the end of the parliamentary mandate in May 2016, and the Scoping Study was never published. The new parliament subsequently only sat for a short period before the collapse of the Northern Ireland Assembly in January 2017, and parliament remained suspended up until January 2020.

⁴ David Ford Ministerial Statement: 'Children in the Justice System: Scoping Study.' Northern Ireland Assembly, 14.03.16.

During the three years in which Stormont was suspended there was no Ministerial oversight of youth justice and no policy decisions that required legislative action could be implemented. However, this is not to say that policy was not taken forward nor that there have not significant developments in youth justice over these years. In the absence of Ministerial oversight, government departments took forward the policy positions of outgoing Ministers and the Executive's Draft Programme for Government (Northern Ireland Executive, 2016).⁵ The Outcomes Delivery Plan (Executive Office, 2019) includes an aim to 'Reduce Reoffending', and Outcome Seven of this plan states that exiting children from the youth justice system 'at the earliest opportunity' will contribute towards this target (Executive Office, 2019:49). The range actions intended to achieve this objective are set out in **Table 1** below:

Table 1: Actions relating to Outcome Delivery Plan (Outcome 7)

Action	Rationale and Benefit
<p>Deliver a range of actions to exit children from the youth justice system:</p> <ul style="list-style-type: none"> • Develop and extend our Earlier Stage Intervention (ESI) programme across Northern Ireland. • Extend the Community Resolution Notice Referral Scheme to deal with all types of offences across all areas of NI. • Deliver Youth Engagement Clinics to divert children from the formal system through the provision of appropriate, timely information and support. 	<p>These initiatives will exit children from the youth justice system at the earlier point, with necessary support.</p>

Source: Outcomes Delivery Plan (Executive Office, 2019:52)

It is evident from the actions described that much of the early intervention is framed within the context of policing and justice. However, the question of the most appropriate locus and targets for early intervention are subject to some debate, a topic discussed later in this report. The *Outcomes Delivery Plan* (Executive Office, 2019:50), also notes that the Departments of Health and Justice 'are also working together to develop a secure care and justice campus for vulnerable children with complex needs.' However, no further detail is provided in the document.

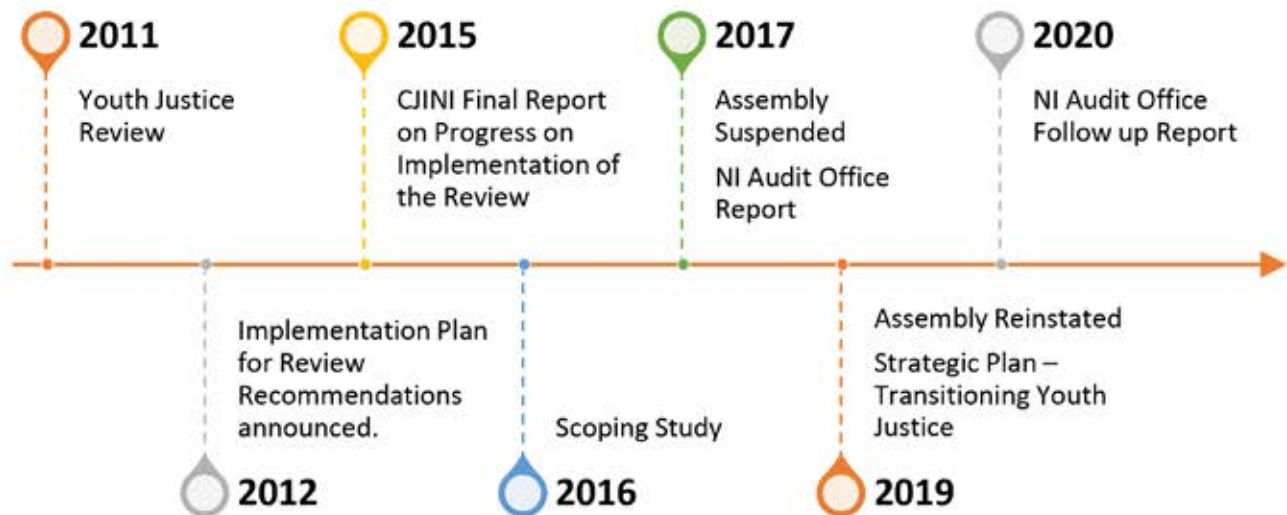
⁵ Peter May, Permanent Secretary, Department of Justice: Department of Justice Overview Briefing. [Committee for Justice, 23.01.20 Official Report \(Hansard\)](#).

The Justice Committee became active again following the re-establishment of the Assembly at the start of 2020. On 6th February 2020 the Justice Committee received an overview briefing from the Reducing Offending Directorate and the Youth Justice Agency. In evidence to the Committee, Ronnie Armour, Head of the Reducing Offending Directorate, stated that youth justice in Northern Ireland is founded on a 'welfare-based rather than a punitive approach'. To support this, he cited evidence of the development of a 'joint multipurpose care and justice campus' and the adoption by the Youth Justice Agency of a 'Children First, Offenders Second approach, including a focus on adverse childhood experiences, trauma-informed practice and signs of safety'⁶. The plans for the re-purposing of the Juvenile Justice Centre (JJC) were clearly at the forefront of activity in the youth justice policy arena during the period of political hiatus, as this formed the most substantive item relating to youth justice discussed at the Committee.

Following the reinstatement of the Assembly in 2020, the Department of Justice and the Youth Justice Agency agreed a strategic plan – *Transitioning Youth Justice* – to take forward the recommendations of the Scoping Study.

Figure 1 below provides an overview of key developments impacting youth justice and the timeline which the report will cover.

Figure 1: Timeline of Youth Justice Policy Developments



Project Aims and Remit

⁶ Ronnie Armour, Head of Reducing Offending Directorate: Overview Briefing on the Reducing Offending Directorate and the Youth Justice Agency. [Committee for Justice, 06.02.20. Official Report \(Hansard\)](#).

The broad aim of this project was to trace developments in the implementation of Youth Justice Review recommendations, focusing specifically on the years after the final analysis carried out by the CJINI (2015a). Given the scope of the Review, and limited project resources, the research team consulted with the Project Steering Group to prioritise areas of analysis. Agreed themes included:

- The minimum age of criminal responsibility
- Policing
- Early intervention
- Diversion and delays
- Custody as a last resort
- Criminal records

Through an analysis of documentation, and interviews with key stakeholders (see below), the research team focused specifically on:

- Identifying progress on Review recommendations, or lack thereof, since 2015;
- Identifying additional areas of development that extend beyond the Review's focus;
- Exploring barriers and enablers to progress in particular areas.

Desk-Based Research

A major element of the project involved the analysis of existing documentation. This process began prior to interviews in order to inform interview schedules and specific issues to explore on each of the above themes. A list of potential documents was shared with the Project Steering Group who provided additional sources of information. Interviewees were also asked to share internal documents that may be of use to the research. Where there were gaps in knowledge among interviewees (e.g. in compiling a timeline of developments), we have attempted to trace these through existing documentation.

The types of documents reviewed fall into the following broad categories:

- Inspection reports and independent reviews;
- Agency/departmental reports, guidelines and statistics (e.g. YJA, NIPB, PPS, DoJ).
- Organisational annual reports;
- Committee minutes, Hansard reports and Assembly questions;
- Consultation responses;
- Relevant local and national research.

Interviews

A list of agencies and potential research participants was compiled in consultation with the Project Steering Group. This reflected: those who could speak to the thematic areas identified above; those who could speak more broadly about developments in youth justice; those who could speak to policy formation/service planning and those who could speak to service delivery. Due the restrictions in place as a result of the Covid-19 pandemic, almost all interviews were carried out via Zoom or telephone, depending on participants' preference. With consent these were audio recorded, and then transcribed. On a number of occasions, more than one representative from an organisation wished to take part in a paired/small group interview. We facilitated this request.

Data collection took place over a 12-month period (March 2020-2021). While not ideal, this was reflective of the difficulties in accessing some individuals and changes in work patterns and commitments as a result of public health restrictions. An invitation to interview was issued to all Members of the Justice Committee, and three of the nine members participated in a joint interview in March 2021. A written response was also submitted by the Minister for Justice, Naomi Long, following a request for interview. The Police Ombudsman Office were unavailable for interview but provided a written response to a small number of questions. Below is an overview of the final sample. Despite repeated attempts, we were unable to get representation from some organisations and specific individuals. Where possible, as noted above, we have made attempts to fill gaps through reference to organisational reports.

Table 2 : Interview Sample

Organisation/ Agency	Number of Representatives
Former Special Advisor	1
Department of Health	1
Health and Social Care (safeguarding)	3
Criminal Justice Inspectorate	1
Youth Justice Agency	3
NI Commissioner for Children and Young People	1
NI Human Rights Commission	1
Public Prosecution Service	2
PSNI	2
Extern	1
Start 360	1
NI Alternatives	1
Members of Justice Committee	3
	Total = 22

Ethical Review

Prior to data collection an application for ethical review and approval was submitted to the University of Nottingham's Research Ethics Committee. This was approved. All participants were provided with an information sheet prior to interview. This outlined: the aims of the project; commitments; use and storage of data and limitations to confidentiality. Participants were reminded before interview of the limits of confidentiality and that while we would not identify individuals by name in the presentation of the research findings, that they might be identifiable given their position in their organisation/department. Consent was provided prior to interviews commencing.

PROFILE OF CHILDREN IN THE YOUTH JUSTICE SYSTEM

Children aged 10-17 account for around 8-9% of all first-time entrants to the criminal justice system in Northern Ireland. The majority receive diversionary disposals (80-90%) (Graham et al., 2020; Graham and Hutton, 2019). In 2019/20, 957 individual children were referred to the Youth Justice System, some on multiple occasions or on multiple charges. The majority of all referrals (n=1631) were diversionary – 42%. A further 29% were court ordered and 17% early stage interventions⁷ (Brown, 2020). The Youth Justice Agency account for the increase in referrals over the past two years as a consequence of ‘the focus by YJA on earlier stage intervention’ (ibid: 5). Early stage interventions accounted for only 3.5% of all referrals in 2015/16. At the same time as an increase in early-stage intervention there have been smaller decreases in diversionary and court ordered referrals (ibid.).

Boys account for over three-quarters of children referred to the youth justice system (78%), as do those aged 15+ (69%). The numbers of 10-13, and 14 year olds has, however, increased over the past five years– 9%-16% and 11%-16% respectively (ibid: 7). This may suggest that the additional children brought into the system under the expansion of early intervention, are younger. While the average daily rate of children in custody remains relatively low (17-25 in the past five years), yearly admissions have fluctuated between 298-424 in the past five years. In 2019/20 there was a decrease of 21% in the total number of children admitted in comparison to the previous year (ibid: 11). That said, a considerably high number continue to be admitted to the JJC under PACE provisions (66%) and on remand (32%) (ibid: 12). As such, the sentenced population is very small. The reoffending rate among those sentenced to custody is traditionally higher than those receiving other disposals (NIAO, 2020). This may reflect the particular needs of these children, and the challenges they face in their lives.

Characteristics and Complexity

The complex lives and needs of those in contact with criminal justice systems is internationally recognised, and the particular vulnerabilities of children and young people are acknowledged:

All children in the youth justice system are vulnerable by virtue of their young age and developmental immaturity. Many are, in fact, doubly vulnerable: that is they are disadvantaged socially, educationally, and also because they experience a range of impairments and emotional difficulties. (Talbot, 2010: 11)

Perhaps reflecting this vulnerability, research also demonstrates the over-representation of particular groups in both youth and adult criminal justice systems

⁷ The remainder are made up of voluntary referrals, community orders, and other referrals.

and at the sharper ends of the system (i.e. particularly within custodial settings). This includes minority ethnic groups, and those with a history of care experiences (Youth Justice Board, 2020; Carr and Mayock, 2019; Lammy, 2017; Prison Reform Trust, 2016). Concerns about the over-representation, experiences and treatment of minority groups are particularly important in Northern Ireland given historical experiences of discrimination for some, and the requirement under Section 75 of the Northern Ireland Act 1998 for public authorities to monitor and address inequalities on the basis of: religious belief, political opinion, race, age, marital status, sexual orientation, gender, disability and dependants (Section 75, NI Act, 1998). This includes monitoring of policies and practices that may affect minority groups.

Despite these requirements, the over-representation of particular groups of children and young people in the youth justice system in Northern Ireland is well-evidenced in reviews, inspections and analyses of administrative data. It is a repeated concern raised by NGOs and human right bodies, including the UN Committee on the Rights of the Child (2016). The Youth Justice Review (2011) highlighted the over-representation of children in care, those with speech and language difficulties and/or mental health problems. It also noted the significant numbers of those in custody with low educational attainment or special educational needs. Supporting this, the most recent inspection of Woodlands JJC found that almost half of the children have special educational needs requiring additional learning support (CJINI, 2018). Additionally, almost half of those admitted in 2016 'were involved with mental health services and had a mental health diagnosis' (NIAO, 2020: 24).

While such background characteristics may not be specific to the custodial population in Northern Ireland, some trends suggest higher levels of representation/ criminal justice contact among some groups than experienced elsewhere. For instance, consistently around one-third of those admitted to Woodlands JJC are from a care background (NIAO, 2017). Recent figures demonstrate a significant increase, of children with a 'Looked After Status'⁸, accounting for 52% of admissions (Brown, 2020). This raises questions regarding 'equitable treatment as regards diversionary options' (CJINI, 2011: 23-24). These children are, however, also heavily represented in diversionary disposals. Around 40% of Youth Conference referrals involve children in care, with many of the offences related to the care home environment (CJINI, 2015b: 20). Consultation with children who have experiences of care in Northern Ireland reiterates the criminogenic nature of care (e.g. VOYPIC, 2011a) with some reporting no or little involvement with criminal justice agencies until entering the care system (Include Youth, 2020). This is recognised in the recently published Northern Ireland Strategy for Looked After Children (DoH/ DE, 2021).

⁸ The term children with a 'Looked After Status' is used in the data collated by the Northern Ireland Statistics and Research Agency (NISRA). This includes children who are in care and subject to care order or voluntarily accommodated. More generally in the report we use the terms – children in care and children with care experience.

Unsurprisingly, given their over-representation at the sharp end of the system, children in care are also over-represented in other parts of the youth justice system. Examining a range of measures of police contact, the Northern Ireland Policing Board (2016: 233) reported a relatively high proportion of referrals to Youth Diversion Officers, noting that 'In 2013/14 0.66% of children in Northern Ireland were looked after yet they accounted for 16.6% of referrals.' This raises questions regarding the needs of children in care, as well as the basis of decision-making processes and factors impacting this. International research consistently demonstrates the over-representation of children in care and children with care experience in contact with the criminal justice system and presents a range of factors that may contribute to this (see for example: Carr and Mayock, 2019). At a local level further research into offending prior to and whilst in care, and the factors impacting on this (e.g. stigmatisation, police engagement, the care environment etc) is necessary.

The high proportion of other groups, in the youth justice system in Northern Ireland has also been highlighted as an area of concern. The 2018 inspection of Woodlands JJC, for instance, reported – 'It is concerning that, as well as the actual number of Catholic children admitted, their proportionate representation had increased steadily in recent years: from 57% in 2013-14 to 76% in 2016-17' (CJINI, 2018: 15). Recognising that actions and decisions at earlier points in the system impact these experiences, the inspection noted this as an issue for the police, Public Prosecution Service (PPS) and the Northern Ireland Courts and Tribunal Service (NICTS) to address. Perhaps also in recognition of some of the unequal patterns of detention, the Northern Ireland Policing Board (NIPB) in their Human Rights Annual Report recommended that the PSNI analyse their statistics on detention of children to assess what alternative options were considered – this has yet to be actioned (NIPB, 2019/20). The Department of Justice/Youth Justice Agency have recently commissioned research 'to better understand' the over-representation of particular groups in the (youth) justice system. This will include, where possible, an analysis of administrative data (e.g. Section 75 and related data) from various criminal justice agencies alongside qualitative research to identify processes that 'could lead to any over representation' (DoJ Tender, 2020). Finally, qualitative research also suggests that children at the hard end of the youth justice system are also often abused/ exploited by paramilitary-style groups (Carr and McAlister, 2014). This further points to the complex needs and vulnerabilities of children in the youth justice system in Northern Ireland.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Youth Justice Review Issues and Recommendations

The minimum age of criminal responsibility (MACR) in Northern Ireland is 10 years old, and as such is one of the lowest in Europe. While recognising ‘the great sensitivity’ around raising the age of criminal responsibility, the Youth Justice Review team noted that criminal/penal responses to problematic behaviour among children are rarely effective (YJR, 2011: 106). Taking account of international evidence and standards the Review made the following recommendations:

Recommendation 29	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.
Recommendation 30	We further recommend that, in the intervening period, appropriate local services and programmes should be developed to meet the needs of children and young people who would otherwise have entered the criminal justice system.

Tracking Progress

The then Justice Minister, David Ford, stated his support for Recommendation 29, and commitment to ‘pressing the case for an increase and ... to continue the dialogue to establish what scope there is for progress ...’ (David Ford, 23rd October 2012). Concerns prior to and in response to the Review recommendations consistently demonstrate a lack of cross-party support, based primarily on the belief of some that children have an understanding of their behaviour, and that criminal justice responses have a pedagogical function. The need for criminal justice intervention, particularly in relation to serious offending was returned to in subsequent debates about raising the MACR. An interviewee from the rights sector noted that some political debates started from a populist perspective of tough on crime and holding offenders to account:

... always look[ing] through the prism of the most serious crimes ... through the worst case scenarios rather than ... taking a nuanced approach. (NIHRC)

CIJNI inspections reported no progress in implementing Recommendation 29 noting that ‘the lack of consensus meant the recommendation was unlikely to be progressed.’ (CIJNI, 2015a: 60). A former Special Advisor interviewed for this study verified that there was a ‘specific obstacle’ in relation to MACR from the early days of the Review:

... minds were closed on that [raising MACR] before the Review even landed.
(Former Special Advisor)

As such, it was felt that energies would be better placed elsewhere:

We weren't going to put enormous energy into something ... we'd been told in stark black and white terms that we would not get through. (Former Special Advisor)

Given the lack of progress, it was unsurprising that in their review of UK compliance with the UNCRC, the UN Committee on the Rights of the Child, for the fourth time, expressed concern about the low age of criminal responsibility, and recommended the State party: 'Raise the minimum age of criminal responsibility in accordance with acceptable international standards' (Committee on the Rights of the Child, 2016 para 78, a)⁹.

A change in Ministers, the lack of a functioning Assembly for three years and, more recently, the Covid-19 pandemic, may have contributed to little further political discussion regarding the MACR. In the intervening period, however, the issue was kept on the agenda by NGOs (e.g. through the *Raise the Age* campaign) and the Northern Ireland Commissioner for Children and Young People. Further, during this period of political hiatus, the UN Committee on the Rights of the Child reviewed its guidance on the MACR in light of developments in evidence, declaring 14 years (rather than 12) as the absolute minimum (General Comment, No.24). Moreover, as Yanghee Lee (Chairperson, UN Committee on the Rights of the Children) noted in the Children's Law Centre Annual Lecture in Belfast (2008):

... it was the general understanding of the Committee that industrialized, democratic societies [like NI] would go even further as to raising it to even a higher age, such as 14 or 16.

Organisations working with and for children in Northern Ireland responded positively to the UN Committee's proposal to raise the MACR, with some expressing the view that it should be raised to 16 (e.g. Include Youth, 2019; NICCY 2019). Citing the over-representation of children in care, and children from deprived communities experiencing conflict legacy in contact with the criminal justice system, Include Youth noted in their submission to the consultation:

A low age of criminal responsibility that seeks a criminal justice solution to welfare and poverty issues simply accelerates already vulnerable children further into the system and ultimately custody. (Include Youth, 2019: 5)

⁹ CRC/C/GBR/CO/5

There was also support for raising the MACR among three members of the Justice Committee who took part in this study. One articulated their views, and the position of their party as follows:

... just to be clear on the age of criminal responsibility ... our party position is that it's 14, it should be the minimum. My own personal view, I think a child is a child 'til 16 in every other circumstance, and why we change that for criminal responsibility, I don't know. And even the caveat around you know ... except in the most serious crimes ... they are either capable of being responsible or they're not, that's my view The party policy at this point is 14, and that is probably because we maybe know we would never get the rest of the world to go for 16, not because many of us wouldn't think that it should be 16. (Justice Committee Member)

Monitoring progress of the implementation of UN Committee's Concluding Observations (2016), NICCY emphasised:

It is unacceptable that 9 years after the report of the Independent Youth Justice Review there has been no progress, even by initialising a public debate, on raising the age of criminal responsibility. (NICCY, 2020a: 51)

While it has been suggested that there is a lack of public will to raise MACR, there is a lack of evidence to support this. As noted by one interviewee: 'nobody ever really got to test that', it is effectively a presumption. There was a belief that the conversation had not been opened with the public, or fully at the political level. As a Former Special Advisor said:

... there's never really any attempt to sell that recommendation [to raise the MACR] by other parties at all, ... views were fixed, and nobody was really ever prepared to have a conversation about it.

Reiterating this, a representative from the rights sector felt that lack of progress was about 'political reluctance' (NICCY). Another felt that the combination of resistance to human rights and populist views on offending and offenders had meant that the idea had not been sufficiently 'interrogated' (NIHRC). A representative from the voluntary sector did, however, note 'punitive' attitudes to young people in some communities and a desire for swift and harsh responses (e.g. 'just get them beat or shot or lock them up'), which it was felt that some politicians harnessed, rather than challenged:

There is a lack of understanding around all of this and rather than providing leadership our politicians buy into that ... (Voluntary Sector Representatives)

Alluding to the generative nature of messaging around MACR, and thus illustrating that intervention in one area may impact others, an interviewee noted:

political opinion is a blockage, and I suppose public opinion is led by politicians and the media quite often and politicians can be very vociferous and they always come back to the Jamie Bulger case. (CJINI)

Consultations with children have, however, been carried out, but not engaged with by political representatives. A survey of over 5,000 children revealed that almost two-thirds (64%) of 10-11 year olds felt the MACR should be at least 14 (McAlister et al., 2017). Adding to the call for change a recent UNICEF UK rights-based analysis of youth justice (Brown, 2020: 103) recommended:

The Northern Ireland Executive should amend its MACR to at least 14 years of age in line with General Comment No.24.

The Northern Ireland Executive should commit to ensuring children's views (UNCRC 1989 Article 12) in Northern Ireland are recognised in any future legislative processes aimed at raising MACR.

Recent Developments

In a recent State of Children's Rights in Northern Ireland (SOCRNI) report, the Commissioner reiterated her call on government to raise the MACR in line with international standards. She cited the return to devolution as an opportunity 'to finally begin the formal process' to implement the YJR recommendation (NICCY, 2020b: 70). At the launch of the report Justice Minister Naomi Long publicly expressed her support for increasingly the MACR.

Likewise, in September 2020, Rachel Woods (Green Party and member of Justice Committee) tabled an Assembly question asking the Justice Minister if she had responses from the Executive on proposals to raise MACR¹⁰. To our knowledge this was the first time MACR had been raised since the Assembly reconvened. In response to a follow up question the Minister reported that there had been only three replies to her request. She stated:

... I would be more than happy to raise the issue with them again *if I felt there was an opportunity to work together* to reach an agreement on implementing the recommendations and complying with our UN Convention commitments.

In the absence of political agreement, *my Department is continuing to implement our policy to divert children of all ages – but in particular younger children – from the formal criminal justice system and deal with them through Early Intervention and welfare measures.* (Naomi Long, 17/11/20¹¹ - emphasis added)

¹⁰ [AQW 6608/17-22](#)

¹¹ *ibid*

The Minister reiterated this in a written response to this study, noting on this occasion, however, that she would ‘pursue progress’:

I have corresponded with Executive colleagues seeking support for an increase in the MACR as I would ideally wish to address it during this mandate. Unfortunately, support has not been forthcoming; I will continue to pursue progress with colleagues. (Naomi Long, 8th January, 2021).

Like the previous two Justice Ministers (Ford and Sugden) who supported raising MACR in line with international standards, the lack of cross-party support may act as a barrier to discussion. Yet as noted by one interviewee, there is an argument for the issue still being tabled:

... we’ve always ... had the same response that it is not something that we could get through the Northern Ireland Executive, ... and I think that they [Justice Ministers] were probably right that if they took it to the Executive it wouldn’t have gone through, and you could argue that they should have still done it anyway ... (NIHRC)

While perhaps not losing sight of the duty to comply with UNCRC commitments, the focus on diversion and early intervention may be a sideways move by Ministers to reduce the numbers of (younger) children responded to through criminal justice processes. Indeed, a representative from the rights sector suggested that some recent developments and proposals in youth justice (e.g. proposals for a regional care and justice campus, expansion of early intervention) ‘where you end up taking children out of the criminal justice system’ are ‘in lieu of raising the age’ (NICCY). Yet, as noted in the following section of this report, there is limited evidence to support the claim that youth justice agency early intervention initiatives are the driver to reduced numbers of children in the youth justice system. These are criminal justice responses irrespective of their aim or ethos. Finally, while increased diversion and early intervention certainly respond to some of the YJR recommendations, this falls short of complying with UN standards and General Comment No. 24.

There was some evidence, however, of a more firm commitment to bringing the issue of MACR to the table and to opening political and public dialogue. Noting their work on this issue, and highlighting how the likes of the *Raise the Age Campaign* could harness this, a member of the Justice Committee stated:

I think that people like ourselves and *** [name of another member of Committee] and others need to start building momentum around this, but we need support, we need the sector to roll in behind us. We need pressure to be brought to bear to change this, and that’s why I’m even talking about that conversation out with the community ... the nonsense is what gets the headlines, I would like for us to find a way for us to engage with journalists and that kind of sector to find a way to say... listen we need your support here, we need you to start changing the conversation out there among the public ... (Justice Committee Member)

Raising the MACR could, according to a representative from the rights sector, change attitudes and responses to youth offending and criminal justice more generally:

I genuinely think raising the age is a way of addressing some of the issues we have in our criminal justice system, now we don't arrest that many under fourteens so it's about a mindset, how we view these children, and for me that's really, really important because then we will extend that to the older ones ... (NICCY)

These points were echoed by a voluntary sector representative in discussing why the youth justice system in Northern Ireland was more 'justice' than 'welfare' orientated, and how MACR was at the 'core' of youth justice reform:

I think partly why we don't have [a system blending welfare and justice] is we haven't implemented the recommendation around the minimum age of criminal responsibility, and I think if that recommendation was implemented that would actually be a transformative moment in our justice system ...' (Voluntary Sector Representative)

Summary

The recommendation to raise the MACR is one of the key elements of the Youth Justice Review that has remained unimplemented. Northern Ireland's MACR of 10 years is one of the lowest in Europe and in clear contravention of children's rights standards. The lack of political consensus on this issue has been identified as the key barrier to progressing this recommendation, with many noting that MACR is a 'special issue' in Northern Ireland. Our analysis suggests that the focus on early intervention and diversion appears to have softened the drive to implement Recommendation 29 and comply with international standards. This issue cannot, however, be side-lined or softened. The NI Executive have a duty to comply with UNCRC obligations and a public responsibility for the issue to be debated. Raising the MACR to an appropriate level, which the UN Committee on the Rights of the Child now state should be 16, will have an impact on all aspects of the system and remove significant numbers of children from the realm of youth justice.

Recommendation

The UNCRC has now recommended that the minimum age of criminal responsibility should be 16 years.¹² The Executive should ensure that the

¹² In its 2008 recommendations, the Committee concluded that: "a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable". The Committee recommended the age of 12 "as the absolute minimum age" and that State parties should "continue to increase it to a higher age level" such as 14 or 16 and the then Chair of the Committee, when delivering the CLC's 2008 Annual Lecture, recommended the raising of the minimum age of criminal responsibility in this jurisdiction. In 2016, the Committee again urged the UK government to "raise the minimum age of criminal responsibility in accordance with acceptable international standards".

MACR is raised to achieve compliance with international children's rights standards as a matter of urgency.

POLICING (POLICE ENGAGEMENT)

Youth Justice Review Issues and Recommendations

A number of the issues raised in the YJR relate to policing and are, in part, discussed in other sections of this report (e.g. early intervention; diversion; the use of PACE in admissions to the JJC; decision-making processes). Within this section we focus specifically on police engagement with young people, and the involvement of young people in decision-making and complaints processes.

The YJR team recognised that as the first point of contact with the justice system, the police play a critical role in impacting young people's attitudes and future engagements (YJR, 2011: 38). Reiterating child rights standards the Review states:

Article 40 of the UNCRC insists that children in conflict with the law be treated in a way that promotes the child's sense of dignity and worth and reinforces the child's respect for the rights of others. (ibid: 40)

While recognising progress in community-police relations since the Patten Review, the YJR also acknowledged the continued negative experiences of significant proportions of young people. Despite commending the PSNI policing directive on children and young people (2010) and the NI Policing Board's Youth Strategy, the Review team observed that '... the police could learn from young people by listening more to them and prioritising their concerns' (YJR, 2011: 40). They also expressed concern about the absence of children and young people in the NIPB's Policing Plan (2011-2012) (ibid: 41) and the Police Ombudsman's failure to encourage, collate and report on complaints from those under the age of 16 (ibid: 41). These concerns were reflected in **Recommendation 4**.

Recommendation 4	Police should build on the progress made since the Patten Report by: <ul style="list-style-type: none">a) raising the priority of children and young people in their planning processes at strategic and local levels;b) modelling best practice in interacting with young people to increase trust and minimise offending;c) developing an appropriate skills package for all Officers on engaging with children and young people;d) removing legal obstacles to developing robust and locally-based complaints procedures to help young people raise concerns and using this as a learning tool, while maintaining the right of unimpeded access to the Police Ombudsman.
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Tracking Progress

Around the same time the YJR team reported their recommendations, the NIPB had undertaken a *Human Rights Thematic Review of Policing with Children and Young People* (NIPB, 2011). There were crossovers in the recommendations of each with regard to youth voice and youth engagement. While CJINI reported that by 2015 two of the four YJR recommendations had been achieved (4a and 4b), subsequent concerns relating to young people and policing were identified by the UN Committee on the Rights of the Child (2016) in their analysis of compliance with the UNCRC. These included: the use of mosquito devices/ other dispersal methods aimed at children in public spaces and the use of stop and search against children; the use of attenuating energy projectiles (AEPs) and Tasers on children. As a public authority, the PSNI are bound by children's rights standards in all matters relating to policing, children, and young people. It is evident that in the period since the publication of the Youth Justice Review, that further areas of concern such as these articulated by the UNCRC Committee, and the organisations reporting into the Committee (Haydon, 2020), raise questions regarding the extent to which children's rights are meaningfully prioritised. In the following section we consider the progress against the Review recommendations and note further priority areas that need to be addressed to achieve rights' compliance.

Prioritising Children and Young People

With regards to prioritising young people in planning processes CJINI noted that a commitment to 'improve quality of engagement and Service Delivery to children' had been included in the 2015 Policing Plan (CJINI 2015a: 13). Also, that the PSNI had high-ranking representation on the Youth Champions Forum. Attended by representatives from the child and youth sector, this enabled engagement with issues impacting young people. While this recommendation was deemed 'achieved', the CJINI reiterated its previous observation that the commitment of key individuals rather than an overarching strategic approach had led to improvements in this area, and that 'the latter would ensure longevity of raising the priority of children and young people in their planning processes at strategic and local levels' (CJINI, 2015a: 13).

While unable to explore with the PSNI Youth Champion the perceived value of this mechanism and how it directly feeds into strategic planning¹³, PSNI representatives reported that the Forum acts as a 'stepping stone between young people and the police', enhancing PSNI awareness of issues impacting young people and feeding into policy and practice. Specific reference was made to the value of the group for

¹³ Two representatives from the PSNI took part in the research. The NIPB identified one representative to speak with us, but when approached this representative felt that they could not speak to the issues of the research. The OPONI were also keen to be represented in the research, but were unable to take part in an interview due to pressures on time. They provided written responses to questions of clarification.

developing understanding of issues impacting children with care experiences, and for providing 'strategic review of ... policies and programs' (PSNI). How information from this Forum is shared across departments within the PSNI, and to what avail, is, however, unclear. Indeed, despite regular meetings and engagement with relevant departments and child and youth agencies, a voluntary sector representative felt that a lot of the conversations were repetitive, and that action was slow:

... they are on this wheel and they are not finding a way to implement change.
(Voluntary sector)

They concluded that progress since the YJR may appear positive, on the face of it, but that impact is less evident:

I think some of their policies, procedures and training has gotten better but I don't think that actually means that practice on the ground is better. (Voluntary sector)

Another interviewee described their experience of the Forum as 'a little bit of hit and miss'. While a third reflected on the positive and negative aspects of it:

... [the PSNI Youth Champion] was very open to the learning, very open to the feedback. To be quite honest with you, some of the feedback was very challenging, and covered the whole, all of the elements of policing ... I was dead pleased to be invited in and to see a change in their direction over that period of time, it was good to see. They ... were moving, moving in the right direction maybe too slowly for my liking but still positive, still positive direction ... (Voluntary sector)

The development of a Children and Young People's Strategy may also, on the face of it, appear evidence of progress in raising the priority of children and young people. Yet the speed of progress and implementation is again an issue, with this Strategy having been in development for a number of years. This was verified by a PSNI representative who noted that the Strategy was now awaiting final sign-off:

... I've been working on that now for a couple of years, unfortunately nothing happens too quickly for us. (PSNI)

While it was noted that young people had been 'consulted directly' (PSNI), this appears limited to language and format rather than content. One interviewee who had viewed the draft Strategy said they would:

... probably give it a B+... there's still a bit of work to be done around policing.
(NICCY)

Due for launch in 2020 (PSNI, 2020a), the Youth Strategy has not yet materialised. While we recognise the potential impact of Covid-19, this Strategy was in development prior to the pandemic (i.e. since 2018). In the interim there is a

disconnect between the details on the PSNI website and the downloadable content¹⁴. The lack of Youth Strategy, which would respond to some of the recommendations raised in the YJR ten years ago, one interviewee felt, was evidence of the low priority given to youth engagement in particular:

How many years ago was the Youth Justice Review published? ... 10 years ago. The police still have their youth engagement strategy in draft form. Now what does that tell you about the importance of this? (Voluntary sector)

While children and young people are included in the NIPB's most recent Policing Plan as victims (primarily of Child Sexual Abuse and Exploitation - CSAE), there is no further specific reference to them (NIPB, 2020b). Prioritising the protection of children from non-state actors is a notable omission, particularly given links with CSAE (McAlister et al., 2021) and concerns raised by both the UN Committee on the Rights of the Child (2016, para 47) and the UN Committee Against Torture (2019, para 42).

In their submission to the Policing Plan consultation, Include Youth (2020) noted that the consultation documents were not accessible to younger children – hence their engagement in the process may have been limited. The Children's Law Centre (2020) also raised concerns about the perceived lack of engagement with children and young people in the development of the Plan. Include Youth strongly recommended 'a co-design approach with children and young people in the development of measurements and ongoing monitoring of the outcomes of the plan' (2020: 4). Such approaches have the potential to enhance the involvement of children and young people at a strategic level in policing. Despite these suggestions, there is no mention of such engagement in the Plan itself, nor inclusion of this as a measurement indicator.

Interacting with Young People

Similar themes emerge in examining progression of Recommendations 4b and 4c (interacting with young people, developing skills and training in youth engagement). In interviews there was recognised commitment and efforts, some good albeit disjointed practice, but limited embedding and consistent delays.

With regards to modelling best practice in engaging with young people and enhancing trust, the CJINI (2013) reported developments in engagement and consultation through: the establishment of Independent Advisory Groups and commissioning training on youth engagement. The NIPB (2013) review of their recommendation to roll out Youth Independent Advisory Groups (YIAG), however, revealed limited progress. By 2015 the CJINI reported: '... Youth Independent

¹⁴ <https://www.psni.police.uk/inside-psni/working-with-our-young-people/youth-strategy/>

Advisory Groups were no longer prioritised by the PSNI, which left only the work of the Youth Service provider to deal with this recommendation.’ (CJINI, 2015a: 14). Despite this, and a lack of information about the nature, effectiveness, and impact of consultation, the CJINI deemed this recommendation ‘achieved’.

Child and Youth Voice

Delays in the roll out of YIAGs have continued. While four such groups existed previously, their role and remit, make-up and longevity are all unclear. Noting that these existed prior to them taking up their current post, a PSNI representative told us:

... previously there was the YIAG, the Youth Independent Advisory Group ... it was before my time within the branch ... I do know that it did exist, but for some reason we are now looking at setting it up again ... I believe the previous one ... ran up until 2015 and there was a gap in regards to it because of resourcing and training issues. (PSNI)

It was reported that in this intervening period there was regular consultation with young people on a:

...small scale rather than ... committee style involvement of young people (PSNI)

This involved engaging young people through partners or in public consultations. While certainly of value, this suggests a lack of strategic, coherent and potentially consistent approach across the organisation. There appears, for a number of years at least, to be no specific youth advisory groups feeding into policing either within the PSNI or the NIPB¹⁵ – thus neither at operational nor oversight level. This raises concerns about the degree to which children’s views, and the issues impacting them, are prioritised and taken into account in policy and practice. It also raises concerns about the realisation of children’s Article 12 right to input into decisions impacting them. The extent to which engagement and consultation impacts on interactions and policing practices is also unknown. There is need for greater monitoring of the impacts of child and youth consultation on policy and practice, and a commitment, demonstrated through action and a cultural shift, to embed child and youth participation.

Representatives from the PSNI reported that plans were well developed, in partnership with the Education Authority, to establish new youth advisory groups. In order to ensure geographic representation, there are plans for one regional committee and 11 local committees. PSNI representatives noted that a key consideration in recruitment would be representation, including Section 75 groups. There appear benefits to this new partnership approach. Clearly, when the sole

¹⁵ An interviewee reported that the status of the NIPB’s youth advisory group was unclear.

responsibility lay with the PSNI there were problems with the approach, consistent delays and breaks in practice. Some issues however, remain unclear and the proof will be in how these groups run, the issues they work/consult on, how that is fed back to the PSNI and the impact of their suggestions on policy and practice. Establishing how impact will be measured and monitored should be a core task of these groups in their early stages of development. Beyond this, the timeline remains unclear. It is not known what stage the local groups are at, and how Section 75 representation, as well as representation from children who have disproportionate contact with the criminal justice system (e.g. children with experiences of care), will be ensured. It is noteworthy that membership for the regional group was advertised in February 2020, and was open only to those aged 16-25 years (PSNI, 2021: 26).

Child and Youth Engagement

Despite delays in some areas, a number of interviewees pointed to positive developments in police-youth engagement in *particular* areas of policing and the commitment and hard work of *particular* officers. Youth Diversion Officers, for example, were credited for their work in early intervention and diversion, and for positive engagement with young people, the community and voluntary sector. A representative from the PSNI felt that one of the most significant changes in policing in the community had been the strong relationships established with community-based restorative justice initiatives in some areas, and the informal learning PSNI had developed as part of these. Others spoke of the commitment of particular officers at senior or neighbourhood level. More broadly, however, their assessment was that there was not a consistent approach and that while good practice existed, and there was a desire to enhance positive engagement, it was not embedded or prioritised. As one interviewee said:

Police don't know how to engage with them [young people], they don't know how to talk to them ... if it's neighbourhood officers, it's done very differently than if its response. And I think that's the bit the police have been unable to embed, they haven't been able to embed a positive youth approach throughout the organisation. They've done some good work with neighbourhood [policing] but not anywhere else ... (Voluntary sector)

The need to enhance trust and confidence among young people, particularly more marginalised groups or communities is recognised and explicitly actioned in a number of policing plans and reviews (e.g. NIPB, 2015; Murray et al., 2018; NIPB, 2019/20). However, NGOs raised concerns about the lack of a specific action to increase young people's confidence in policing in the 2020-25 Policing Plan (e.g. Children's Law Centre, 2020: 29; Include Youth, 2020: 7). Include Youth's consultations with young people demonstrate the continued lack of confidence among some, and the need for targeted work to enhance confidence and positive

relations. The view of one young person is illustrative of that expressed in other research:

Even if [I] was shot, the police wouldn't help me. They would think I deserve it because I'm a criminal. (Include Youth, 2020: 8).

Enhancing confidence is necessary to enhance legitimacy in state policing, and in tackling paramilitarism. The continued impacts of paramilitary abuse and exploitation on children and young people are cited in the NIPB Human Rights Annual Report (2019: 218) as evidence that '... the importance of the police continuing to build trust and confidence in policing amongst young people cannot be understated'. The lack of targeted action for children and young people in the 2020-2025 Policing Plan, could impact resources and initiatives directed to them, and/or specific measurements of impact of initiatives to enhance confidence among children and young people.

Yet, many PSNI programmes of work within communities are clearly premised on the importance of developing trust and confidence among young people, as a PSNI representative recognised:

... the main things I suppose from the police side, obviously, it's getting involved with youth groups, it's getting involved with children, it's engagement, it's engagement with them properly on the ground, the first port of call as you know, if the first contact isn't good well that sets, we'll just say it sets a bad example for the whole way down the line, so it needs to be correct ... (PSNI)

A second PSNI representative spoke of some the engagement programmes currently underway and the value for all involved. Speaking of the Youth Volunteer Academy that engaged with around 150 'at risk' young people per year, they noted the many advantages of partnering with the Education Authority Youth Service – to recruit the right young people (i.e. 'hard to reach'); for PSNI officers to learn youth work/engagement skills and to ensure young people got accreditation for involvement in the programme. Beyond this was the aim to 'break down barriers' and provide opportunities for both young people and police officers to see beyond stereotypes:

... it's the conversations that young people and those officers ... get the opportunity to have, that they wouldn't have in any other scenario is what makes the change and helps to build the confidence of those young people in their local police service, and afterwards that they have this connection so should they see those police officers out and about that they would, you know, have a different view of them and a different respect for them, and again similarly that the officers to those young people, knowing what their home lives are, knowing what their circumstances are, you know to help build that bit of connection between them. (PSNI)

Additional programmes in schools were explained as having similar aims. Each programme is evaluated, however, the summary evaluation we were provided with was based on findings and recommendations from facilitators rather than participants. It is difficult, therefore, to assess *from young people's perspectives* the impacts on increasing trust and minimising offending (CJINI, Rec 4b). Despite a commitment to establish a baseline of young people's confidence in the police by 2015 (NIPB, 2015), we were unable to track progress of this. Without a baseline, it is difficult to assess the impact of programmes and practices aimed at improving confidence. Representation of young people in such initiatives is also unclear. Consultations with children in care demonstrate a particular need for relationship building (e.g. Include Youth, 2020; VOYPIC, 2011b) and it is unclear if these initiatives, or others, are engaging with these children.

Undermining Confidence and Good Practice

The value of some of these initiatives and the commitment of particular officers was articulated by a number of interviewees. Yet a range of issues potentially undermining or interrupting positive engagement activities were also identified. The use of stop and search powers was consistently raised as an issue impacting young people's confidence in the police. Topping and Schubotz (2018) reported that children (males, aged 15-17 years) are four times more likely to experience stop and search than the general population. Despite some recent decline in the overall rate of stop and search in Northern Ireland (PSNI, 2020b), children (aged 13-17 years) still account for almost 12% of stops while making up only 6.4% of the total population (Butterly, 2021). Children and young people (those under 25 years) account for the highest proportion of stops (58%), yet the arrest rate for this group is low, at just 4% (PSNI, 2020b). These figures continue to raise concerns about the disproportionate use of stop and search powers against children and young people, and hence their right to non-discrimination on the basis of age (Art. 2, UNCRC), as well as the efficacy of this policing approach. The UN Committee on the Rights of the Child (2016, para. 37) in its analysis of the UK and NI, commented on the use of stop and search powers against children. It recommended, among other things, the proportionate use of statutory stop and search against children, and the regular collection and analysis of stop and search data disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background. While the PSNI do collate this data, they have not implemented the NIPB Thematic Review recommendation (2013), to record the community background of individuals stopped and questioned/searched. This is particularly important in Northern Ireland to assess potential discrimination; it could also enhance confidence in policing among some communities.

That 69% of those children who reported having been stopped and searched in the 12 months prior to completing the *Young Life and Times* survey had not been provided with a clear reason for being stopped, also calls 'the procedural and legal

propriety with which PSNI are using stop and search powers ... into question' (Topping and Schubotz, 2018: 5). With regards to their stop and search experiences, 31% of children defined it as unnecessary harassment and 35% reported that it had resulted in more negative attitudes to the police (ibid). The NIPB (2019/20: 142), among others, recognise the negative impact of stop and search on police-youth relations, and consultation with children and young people consistently attests to this. Include Youth's consultations with young people, for example, raise concerns about feeling targeted and victimised through stop and search; stop and search leading to further charges; not being provided with information about the reason for the search or their rights in relation to this; 'stop and search' impacting on how young people are viewed in the local community (Include Youth, 2020). In the case of Ailse Ní Murchu, a 16 year old who challenged the lawfulness of her stop and search, the court noted that:

Those involved in the creation and exercise of stop and search powers should not underestimate the potential for public harm in the event that the powers are used arbitrarily and excessively in respect of minors in terms of the effect it could have on confidence in and support for the PSNI (in Seymour, 2020: para 7.12).

The Independent Reviewer of the Justice and Security (NI) Act further notes that while the PSNI have committed to review stop and search powers, particularly in relation to children and young people, that:

The challenge now for the PSNI is to transform that high level commitment into a cultural change which fosters empathy and understanding with children in every encounter and does not result in alienation. That is a challenge which goes some way beyond strict legal compliance with statutory obligations. (ibid.: para 7.16)

The PSNI have recently launched a survey to collect children's views and experiences of stop and search. While drawing on advice from voluntary and statutory organisation in the design of the survey, it does not appear to have been co-designed with young people themselves.

Within our research, the police use of stop and search was identified as highlighting a paradox between avowed commitments to human rights and furthering engagement with children and young people and practice on the ground:

... the police [have] been very good on absorbing, understanding, and incorporating HR [human rights] into their day-to-day policing on the one hand, but paradoxically on things like stop and search we appear to have a set of issues. Even a more upfront rights-based approach doesn't mean there are not issues in how young people are treated on a day-to-day basis with regards to policing ... (NIHRC)

This is reiterated in the NICCY Statement of Rights (2020b: 68):

Whilst PSNI have a clear policy commitment to children's rights, this means nothing if when they engage with young people in routine operations, it has the opposite effect. It is these experiences that shape the views of young people, and will impact on the confidence in the PSNI, if they are victims of crime in the future.

While the Commissioner does recognise some recent improvements in practice, in reporting and in the information provided to children, she nonetheless notes that this does 'little to support the assertion that Stop and Search is an effective policing tool, or that it meets a range of objectives and certainly that it is in the best interests of the child' (ibid.: 69). Indeed its role in detection and prevention, more generally, has been estimated as being relatively small or difficult to assess (Miller et al., 2000; Topping and Bradford, 2020).

In addition to stop and search practices potentially undermining positive developments in police engagement and confidence building, some interviewees also spoke of positive youth engagement being left to a small number of personnel – thus being neither embedded, nor consistent. One interviewee noted that this sort of work could be left to particular officers who would either 'burn out' or move on. Hence the 'churn' of personnel who had established positive relationships in communities and with young people, could impact on local trust, confidence, continuity, and longevity of positive relations (Criminal Justice Inspectorate respondent). A PSNI respondent made a similar point:

... people do tend to move on ... it can be detrimental because young people will form a bond with particular people ... and a new team will come in and therefore it will have to start from scratch again (PSNI).

This combined with what one voluntary respondent described as a constant process of piloting and evaluating programmes rather than capturing, rolling out and embedding good practice:

...it's a lack of real appetite, it's not given the level of importance that it should because if ... you value it, you will make it happen... What they do, and they do this really well is they start a ... pilot ... 'well it's still a pilot, and we need it evaluated', and then that project ... just falls off the end of the earth because personalities have changed, personnel have changed, it just falls away. The real good learning is not captured and it doesn't go anywhere and it's not embedded. So why don't they change? They don't change because they don't see it as core business ... (Voluntary Sector)

Despite a rhetoric to enhance positive engagement with children and young people, lack of progress, some on the ground practices and policy decisions, question established commitment to this aim. The permitted use of AEPs and Tasers on children as young as ten has raised consistent concerns, with the UN Committee on the Rights of the Children recommending as far back as 2008, that State parties 'put

an end to the use of all harmful devices on children' (CRC/C/GBR/CO/4, para 31). More recently, similar concerns have been raised about the use of spit and bite guards introduced as part of emergency police powers. The Children's Law Centre, in their response to the NIPB's review of the PSNI response to Covid-19 stated: 'We are of the view that the use of Spit and Bite guards as a form of police technology is analogous to the use of Tasers and AEPS' (CLC, 2020: 8). As such, they carry the same human rights concerns, including the child's right to protection from violence and cruel or degrading treatment. NICCY also suggest that the introduction of spit and bite guards questions PSNI commitment to implementation of Article 3 of the UNCRC (the best interests of the child) (NICCY, 2020b: 68).

Training for Effective Engagement

The NIPB and the YJR both recommended the development, and roll out of training for *all* officers, on engaging with children and young people. In their final review of progress, the CJINI noted delays in achieving this recommendation, reporting that training had only been undertaken by three groups and there were no plans for further roll out. The NIPB (2013: 28) also noted that *some* officers had received children's rights training, and that child protection training was being rolled out across all districts. This is, however, far removed from the Review recommendation of training for all officers and the NIPB recommendation of bespoke youth training as part of training for all new recruits, and refresher training for existing officers (NIPB, 2013: 37). A PSNI representative who took part in this study did, however, report plans to roll out some Education Authority training to all officers:

... all of our officers that take part in the YVA (Youth Volunteer Academy) and the site programmes, they would get child safeguarding training delivered to them via the EA [Education Authority] and we find that a lot of our officers gain so much experience from working directly with those youth workers, that they're getting so much experience from doing the process, they're learning different ways of how youth workers would approach any situation versus what we would. But officially getting trained ... EA are delivering Circle of Courage training workshops to all of our police officers, now that is still in its infancy of roll out, it's been done in a few areas but the plan is that it is going to be rolled out across all officers. I don't have a time frame for it unfortunately ... but it is going to happen. And that would be various techniques and it's much like the ACEs-style [Adverse Childhood Experiences] training, where they are told what to look for and how to approach any particular sort of issues or subjects with young people and different skills and techniques that they can have. (PSNI)

Consistent with other areas of police engagement, plans with regards to training in youth engagement also appear to be *in development, pilot or roll out stage* (as they were at the time of the 2015 CJINI monitoring report). Thus, while it is unclear if a 'skills package for engagement with young people' (CJINI, Rec 4c) has been developed and is rolled out to all officers, it appears unlikely. That said a Youth

Justice Service Instruction was updated in 2018. This provides guidance to all officers on engaging with children and young people, including victims, those deemed at risk of offending, and those who are suspected of offending.

Police Complaints

Recommendation 4d of the Review related to removing obstacles to young people making complaints, including developing locally-based complaints procedures, and raising awareness of the role of the Police Ombudsman. While the CJINI (2015a: 17) reported that the Office of the Police Ombudsman (OPONI) had 'engaged in a considerable amount of work' to raise the profile of their Office with young people, and to engage with them through social media campaigns, engagement events and forming a youth advisory group, this recommendation could not be fully realised without legislative change¹⁶.

Engagement activities and awareness raising campaigns aimed at informing young people of complaints procedures have continued since 2015. Also, in 2017 a policy on recording complaints from juveniles was developed in order to protect their right to make a complaint¹⁷. In addition to engagement events in schools and at public events, a video explaining the work of the OPONI was targeted at young people through Facebook (Police Ombudsman for Northern Ireland, 2016). In 2017/18 the Office produced another video targeted at young people through Facebook, in this instance to inform them of their 'rights and responsibilities when stopped and searched' (Police Ombudsman for Northern Ireland, 2018: 19). The impacts of these initiatives on young people's knowledge of the police complaints system is unknown. Questions on public awareness of the Police Ombudsman were included in the NI Life and Times Survey in 2018, but this is only completed by respondents aged 18 and above. That said, this revealed that younger respondents (aged 18-34) were less likely than older age groups to know of the Office (Police Ombudsman for Northern Ireland, 2019a). Consultations carried out by VOYPIC (2011b: 18) revealed that young people were not clear about how to make complaints about policing, with 100% of those completing an e-consultation agreeing that the police should find ways to help young people raise concerns. The last survey of young people's (school pupils) knowledge of the Police Ombudsman revealed that only 23% had heard of them (Police Ombudsman for Northern Ireland, 2015).

Finally, a CJINI press release in 2020 makes reference to an inspection of the Police Ombudsman Office in Spring 2019¹⁸. It is possible that the issue of youth complaints

¹⁶ The Executive did not agree to legislative reforms for the OPONI in 2014, of which locally based complaints mechanisms was one proposal.

¹⁷ Available - <https://www.policeombudsman.org/PONI/files/08/08bf5f7d-3231-44e4-b82f-2384ba2f56c2.pdf>

¹⁸ Available - <http://cjini.org/NewsAndEvents/Press-Releases/2020/January-March/Review-finds-effective-working-relationship-between>

is reviewed as part of this. The report, however, is not yet publicly available. Additionally, despite a diverse range of engagement activities the number of complaints made by young people has remained consistently low. Only around 3% of all complaints (for which age data is available) were made by those under 18 years (Police Ombudsman for Northern Ireland, 2019b: 4). Given some of the negative experiences reported by young people in relation to policing, this low rate might be reflective of young people's relationships with, and lack of trust in, the police. A representative from the voluntary sector also felt that this might point to an issue with the system itself, not with youth engagement.

In a written response to this study, a representative from the OPONI reported that:

The Police Ombudsman is conscious of the need for the Office to ensure that children and young people are aware of the fact that they have an independent and impartial organisation who can investigate their complaints about police conduct.

To this end, the OPONI is in the early stages of drafting a youth engagement strategy. The intention is to consult with young people, NGOs, and other relevant parties to inform this. It will be important to ensure good representation of children and young people in this consultation exercise, alongside examining the applicability of the current complaints process for children and young people.

Summary

That there were programmes of youth engagement, various strategies and committees in development or underway may be one reason why the CJINI (2015a) assessed aspects of YJR Recommendation 4 on policing of children and young people as 'achieved'. However, progress since has been slow and piecemeal, with some initiatives ceasing to operate. Furthermore, additional concerns regarding the extent to which policing in Northern Ireland falls short of children's rights standards have been raised by the UN Committee on the Rights of the Child (2016). Evidently, a range of initiatives are again underway to raise the profile of children and young people as a priority in policing, to enhance positive engagement and build confidence and trust, and to raise awareness of complaints procedures. However, as documented much of this is still in the development stage, yet to be rolled out or embedded. The pattern of delay, or dropping off the agenda, suggests that children and young people are not prioritised at an organisational level. The Review's observation that '... the police could learn from young people by listening more to them and prioritising their concerns' (YJR, 2011: 40) has progressed in little strategic way in the past ten years. New relationships with the Education Authority hold promise, but this will require evaluation of the *impacts* of training, engagement activities and child and youth consultation, on the ground. A range of issues raised indicate that much more needs to be done by the PSNI and the various policing oversight bodies to achieve compliance with children's rights.

Recommendations

- The PSNI should fully implement all aspects of Recommendation 4 of the Youth Justice Review.
- The PSNI should ensure full compliance with the recommendations of the UN Committee on the Rights of the Child with regards to policing.
- PSNI policy and practice should reflect all aspects of the UNCRC, to ensure child's rights compliant policing.
- The NI Policing Board and the PSNI should dedicate resources and capacity to ensure there is a renewed focus on children and young people's experience of policing and that the PSNI are held accountable for non-child's rights compliant practice.
- The PSNI at all levels should receive training in children's rights. This training should be repeated on a regular basis.
- The PSNI should ensure that training on youth engagement and participation is rights' compliant.
- The PSNI should conduct meaningful engagement with children and young people, key stakeholders, community, and voluntary sector, resulting in direct change to policy and practice. The impacts of engagement on children's confidence in policing, on policy and practice, and rights compliant policing should be effectively monitored and evidenced.
- The PSNI and the NIPB should comply with their Section 75 duty, including directly involving children and young people from all the Section 75 categories in decision-making forums. These should include those who disproportionately come into contact with the law.
- The PSNI should comply with their Section 75 duty to collect data to enable effective monitoring and oversight.
- The NIPB should address disproportionate use of stop and search powers on children and young people.
- The Police Ombudsman's Office should ensure the complaints process is accessible to children and young people.

EARLY INTERVENTION

The first three recommendations of the Youth Justice Review relate specifically to early intervention and prevention:

Recommendation 1	As part of a revised and reinvigorated children's strategy, the NI Executive should develop an early intervention and prevention strategy, to be delivered locally through the CYPSP. The strategy should include a set of achievable outcomes and be accompanied by guidance on how agencies & voluntary sector should work in partnership to deliver it, based on best practice.
Recommendation 2	The NI Executive should determine how best to secure funding to invest in early intervention and prevention.
Recommendation 3	To support this shift in resource allocation and investment we recommend that the NI Executive sets up an Early Intervention Unit.

Early intervention to prevent offending is viewed as a desirable policy option on the basis that it potentially prevents children and young people entering the youth justice system. Research evidence from a wide range of studies in different contexts demonstrates that the further a child enters the youth justice system the poorer their outcomes in terms of recidivism, educational attainment, and a wide range of other social measures (McAra and McVie, 2007; Motz et al, 2019). Therefore, interventions aimed to prevent involvement with the criminal justice system in the first instance are viewed as a possible means of *both* preventing offending *and* ameliorating these negative outcomes.

It is now widely recognised that investment in the health, education and parenting of children during their early years has a measurable and significant impact on their future life chances, including their likelihood or otherwise of engaging in criminal behaviour. A substantial body of research exists that demonstrates not only what makes it more or less likely that children will behave antisocially or criminally, but also what interventions are most likely to prevent them doing so and what the savings are to the taxpayer of such investments. (Youth Justice Review, 2011:30).

Some have argued that family support is a more meaningful concept than early intervention, particularly in the context of child protection and welfare (Featherstone et al, 2014). Questions regarding the timing of early intervention and whether early intervention services should be universalist or targeted are also frequently debated (Winter et al, 2018). Targeted early intervention provision necessitates the development of some form of mechanism and/or assessment through which the population who are the desired subject of intervention can be identified. Universalist services, on the other hand, involves the provision of services to all children (although usually specified by age-cohort, or in some instances by geographical region). Critics of targeted approaches highlight some of the problems with the evidence base underpinning assessments of which individual groups or populations should be targeted. For instance, in relation to youth justice, the influential Risk-

Factor-Prevention-Paradigm (RFPP), informed by research from the Cambridge Study of Juvenile Delinquency Study (Farrington, 1996; 2007) and other similar studies, has led to the identification of specific risk factors (e.g., poor parenting skills, poor academic performance, disruptive behaviour etc.) that are posited to be predictive of future offending. Identification of these risk factors and early intervention to prevent future offending is a central tenet of RFPP-informed approaches and various initiatives in different contexts have been developed in accordance with these principles (Case, 2007; Kelly, 2012).

However, the RFPP in respect of juvenile offending has been subject to sustained critique, not least because of questions regarding its predictive validity as well as criticisms about its failure to adequately account for wider structural variables, such as poverty and deprivation (Webster et al, 2006; O'Mahony, 2009; Haines and Case, 2008). Informed by the insights of Labelling Theory (Lemert, 1967), concerns have also been voiced about the delivery of such interventions through justice agencies, and the targeting of children and young people for early intervention based on possible future offending, thereby marking them as 'putative offenders' (Haydon, 2014). Indeed, referencing Council of Europe Guidance¹⁹, the Youth Justice Review (2011:35) specifically cautions that early intervention programmes:

...should respect the privacy and integrity of children and their families, take account of the principles of proportionality, non-stigmatisation and non-discrimination.

Some of the debates about the modes of delivery of early intervention services echo concerns about 'diversionary' approaches being delivered within a system that young people are ostensibly supposed to be diverted from (Haydon, 2014; Kelly and Armitage, 2015; Smith, 2020). These issues are also pertinent to concerns about the boundaries between early intervention and diversion programmes, a topic that is discussed further in the subsequent section of this report which, deals with progress since the Youth Justice Review on Diversion and Tackling Delay. An extensive body of evidence therefore points to the importance of universal provision that is more broadly framed as support, and which avoids the association with stigma that some targeted programmes, particularly those delivered under the ambit of criminal justice and statutory services may convey.

Early Intervention Transformation Programme

At the time of the Youth Justice Review no early intervention strategy existed and the Review team noted an 'ad hoc' approach and a 'degree of ambiguity' over which agencies and/or departments should lead on this work (YJR, 2011:31). In the years following the publication of the Review, there has been a significant step-change in

¹⁹ Council of Europe: Recommendation (2000) Rec. 20: "The role of early psychosocial intervention in the prevention of criminality."

the development and delivery of early-intervention in Northern Ireland, this was observed by respondents including those involved in Safeguarding. Respondents from the Youth Justice Agency also commented:

That [early intervention] was a big item within the Youth Justice Review, but it's one that over the last four or five years that's really got traction and has become really effective. We all realise that the earlier you intervene, in no matter what services you provide, the better results you get. (Youth Justice Agency)

2014 saw the implementation of the **Early Intervention Transformation Programme (EITP)**, an initiative developed under the Developing Social Change (DSC) programme and jointly funded by Atlantic Philanthropies and five government departments²⁰. The EITP comprised of four workstreams and entailed the investment of £30 million in a range of initiatives over a 6-year period (March 2014 to March 2020). A total of 19 projects were funded under the EITP programme, which were delivered by a mix of statutory and voluntary sector providers. The Workstreams and associated projects are listed in Table 3 below.

Table 3: Early Intervention Transformation Programme Workstreams and Projects

Workstream	Projects
Workstream 1: Parenting skills and early years	Getting Ready for Baby Getting Ready for Toddler Getting Ready to Learn Play and Leisure
Workstream 2: Family support before statutory involvement.	Early Intervention Support Service
Workstream 3: Addressing the impact of adversity on children (targeted towards specific groups e.g. children of imprisoned parents; children in care; family drug and alcohol courts);	Building Better Futures Family Drug and Alcohol Court Community Diversion Children of Imprisoned Parents Early Intervention Childcare Edges Home on Time 6 in 10 LAC Education
Workstream 4: Professional Development with a specific focus on Adverse Childhood Experiences.	Professional Development Project

²⁰ Department of Health, Department of Education; Department of Justice, Department for Communities and Department for the Economy.

The EITP included a mix of universalist and targeted provision. While all of the areas of the EITP are potentially relevant for children and young people who may at some stage have involvement with the criminal justice system²¹, projects delivered under Workstream 3 have most direct relevance to this group (e.g. the Edges Project delivered by Start 360). Two of the EITP's targeted areas for improved well-being for children, young people and families, specifically concerned outcomes of direct relevance to the youth justice system:

- Lower recidivism rates.
- Reduced number of young people in the justice system.

Impact of Early Intervention

Throughout the interviews for this report, participants from across a range of sectors remarked positively on the fact that in the period since the publication of the Youth Justice Review, there has been a marked decline in the number of young people in the youth justice system. Some participants credited this reduction in part or directly because of the success of early intervention initiatives:

So if you look at the amount of work that's been done through the early intervention strand... inventive ways to work with children to provide the right support for them in the community, so that they don't progress into the wider system, and [become] too far entrenched into the justice system, and the result of that has been, and there are statistics on it, that through the work, not just ourselves but all the justice players, over the past five years we've had a 54% fall in the number of children coming into the formal justice system. And then the trajectory of that has been that we've had a 50% fall in the average daily population in Woodlands. That's the trajectory we are staying on. (Youth Justice Agency).

Notwithstanding the clear evidence of reduced numbers of young people entering the Youth Justice System, there is limited evidence available at this point to link this directly to the impact of early intervention initiatives. And there are well-recognised difficulties in measuring the impact of early intervention initiatives, not least because of the challenges in establishing baseline data. As one respondent observed:

Early intervention [and] prevention ...take a little while for real life outcomes to be obvious...how do you measure that? Well we need to agree how we measure that. (Voluntary Sector Agency)

²¹ For instance, in an evaluation of the Early Intervention Support Services delivered in Workstream Two, the following outcomes are included: 'Improved Child Conduct and Emotions' incl. Reduction in conduct problems; Improved anti-social behaviour (Winter et al, 2018:3).

The EITP adopted and Outcomes Base Accountability (OBA) methodology to evaluate the immediate impact of early interventions, however, many of the impacts will not be evident for some time. These challenges are recognised in the EITP's own account of 'Lessons Learned':

Early Intervention benefits are rarely realised quickly and can be challenging to measure. EITP projects were generally limited to capturing data on short-term effects and were unable to measure long term outcomes for practical, ethical and financial reasons. At a population level, the programme did not establish a baseline position, which presented challenges in measuring the delivery of objectives. We would recommend that similar programmes should commission longitudinal studies to measure effectiveness and inform future interventions. (EITP, 2020).

Challenges in demonstrating evidence of effectiveness have wider resonance beyond early intervention within the youth justice system. Two Northern Ireland Audit Office reports have critiqued the lack of system data allowing for meaningful analysis of impacts of interventions and value for money (NIAO, 2017;2020). Thus, despite the YJA's argument about the value and impact of their early intervention work, the NIAO has concluded that such assertions are not backed by sufficient supporting evidence:

Measuring, reporting and analysing the impact that various activities have on service users is essential for both accountability and effective long-term governance of the youth justice system and its reform. While senior management can readily articulate examples of progress, performance measurement does not yet provide a clear and comprehensive understanding of the impact of the Agency's work on the lives and offending behaviour of the young people it deals with. (NIAO, 2020: 32)

Scope of Early Intervention and Longer-Term Sustainability

Respondents from the Youth Justice Agency noted that 'early intervention' has been an integral element (described as 'one of the legs of the stool'), of plans to change aspects of the youth justice system, announced by David Ford in the Assembly on March 16th 2016, and following from the internally conducted Scoping Study (the second and third legs of the stool being legislative reform and repurposing of Woodlands). The most recent data on the number and profile of cases dealt with in the Youth Justice System shows that while the overall numbers of young people in the system has fallen over the past 10 years, and court-ordered referrals have specifically declined, the proportion of young people being dealt with by the Youth Justice Agency through 'early intervention' and 'voluntary' referral routes has increased steadily over the past five years, and now accounts for 20% of all referrals to the Agency (NIAO, 2020:19; Youth Justice Agency, 2020). The most recent Annual Report from the Youth Justice Agency expresses the commitment to further expand the work of the Agency in this area (Youth Justice Agency, 2020).

However, while early intervention clearly has relevance for which children enter the Youth Justice System, some respondents questioned whether the Youth Justice Agency itself should be directly involved in early intervention work:

Our Youth Justice system thinks that it has a role in that but in my view...it doesn't, well it does, it should inform that early prevention and intervention services, because they know from the young people ... who slip through, what they need, but it shouldn't be delivering services... (NICCY).

A recent review of the role of the voluntary sector in the delivery of services to children and families with complex needs (Butler et al, 2019), notes the potential for services within this sector to be less stigmatizing than statutory provision:

Commissioning voluntary sector agencies to provide services to children and families with complex needs appears to be largely beneficial, given the potential within the voluntary sector for independence, innovation and flexibility, reducing stigma, reaching hard to access populations and responding to local situations and complexities. (Butler et al, 2019:5)

However, this potential can be impacted by cultures and practices of service provision, including the efficacy of interagency working and commissioning arrangements (Butler et al, 2019). Concerns regarding the longer-term sustainability of early intervention programmes at the end of the EITP, linked to future commissioning arrangements were raised by some participants. The importance of Family Support Hub models in particular were noted, and concerns were raised about the potential impacts of any diminution in service provision for children in the future.

Plans to continue funding of Early Intervention Programmes are currently being considered by government. Some respondents expressed concerns that insufficient time was given to measure the impact of the programmes and that with an inevitable contraction in funding that statutory service providers would be prioritised in future funding streams. Some of these concerns were voiced in the context of the planned re-purposing of Woodlands and proposed plans to develop satellite provision in the community. These concerns have also been noted in some of the responses to the consultation on re-purposing, with queries regarding the current lack of specification of how such services would be shaped or costed (Include Youth, 2021) and whether investment in re-purposing would lead to shortfalls elsewhere (NICCY, 2021).

Some respondents also expressed concerns that that Youth Justice Agency would take on roles currently being undertaken by voluntary sector providers in a form of 'mission creep' and thereby inappropriately 'crowding out' these providers.

Continued expansion of the YJA into early intervention could, perhaps inadvertently, negatively impact the realization of Recommendation 27 of the Youth Justice Review (building on the success of youth and community work), as it moves into areas of expertise associated with the youth and community sector. Indeed, a PSNI representative noted the tendency to refer to the YJA rather than community organisations, perhaps demonstrating their developing role in the early intervention field:

... we do meet with some resistance at the Youth Justice Agency, they would say we are the statutory group, we should be referring to them. My point of view would be that these agencies are also accredited, and the work I've seen them do in community, they do some do fantastic work ... (PSNI)

Respondents from the Youth Justice Agency, however, were positive about the role of voluntary sector agencies in the provision of services and envisaged a continuing role for this sector in the context of service provision following repurposing:

One of the conversations we have had both with the Stakeholder Reference Group and the Programme Board, this isn't about being precious and saying it all has to be done by me or you or whoever, this is about saying who's the best person to do it and working through that body, be that third sector, public sector or whatever. So they will be hand-in-hand part of this going forward in helping us shape the future and when we get to delivery it will be a case of looking at who's best to deliver services. So, I see a very active role...now insofar as a lot of the voluntary sector and community groups play a huge part, in both the work that goes on down in Woodlands, but also the work we do in the community, particularly around early intervention. (Youth Justice Agency)

Members of the Justice Committee whom we spoke to noted the critical importance of early intervention services, and the fact that the locus for these services should be delivered 'as early as possible' and outside of the scope of the justice system:

Early intervention needs to come at the earliest possible stage, so not when they first come to the attention of the justice system, you know whether it's through the PSNI or however they come to their attention. It's whenever they're in nursery. (Justice Committee Member).

However, the challenges of funding were also noted, particularly in the context of funding being directed towards the 'harder ends' of the justice system.

There's constant conversation about the importance of early intervention, around the fact that it saves money further down the road, and we know it does. (Justice Committee Member).

...the resources have all traditionally gone to the hard end and the things that you can see, and you can measure those things. (Justice Committee Member).

Summary

Since the Youth Justice Review there has been significant development in a range of early intervention provision through the EITP. However, the funding for this initiative is reaching an end, and there are concerns about the sustainability of projects, particularly those delivered by the third sector. There is a strong view across many sectors that the effects of this early intervention work have yielded positive results for children and families, and some evidence to support this. However, the evidence base in respect of early intervention could be much more robust. The Youth Justice Agency credit early intervention work with a reduction in the numbers of young people entering custody. However, the Northern Ireland Audit Office have critiqued the general lack of data within the youth justice system, which means that the impacts of interventions cannot be meaningfully assessed. Caseload data indicates that the Youth Justice Agency is carrying out work framed as 'early intervention', but a range of research evidence points to the fact that early intervention is best positioned outside of the justice system if the intention is to avoid the impacts of stigmatisation and the negative effects of system contact.

Recommendations

- **The Executive should ensure that a comprehensive Early intervention Strategy is at the heart of the Programme for Government, is adopted as a cross-departmental commitment and is properly resourced.**
- **The Executive should ensure that cross departmental early intervention work gives effect to the statutory duty to co-operate, as outlined in the Children's Services Co-operation Act.**
- **The Executive should ensure that voluntary and community sector providers, including those in the children and the youth sector, are adequately resourced to conduct early intervention work with 0-18 years old age group.**
- **The Executive should ensure that investment in early intervention should include mechanisms to evaluate impacts over time.**

DIVERSION AND DEALING WITH DELAY

The delay that permeates the entire criminal justice system is by far the most serious challenge we identified. (Youth Justice Review, 2011:12)

Issues regarding delay was one of the key problems identified within the Youth Justice Review. At the time of the Review Youth Conferences and Youth Courts took, on average, 260 days to reach decisions from the date that the young person was charged or summonsed. The impacts of delay were evident in all aspects of the system, from bail and remand to sentencing and sentence implementation. Given the gravity of concerns in this area, and the fact that previous attempts to tackle delay had yielded limited results, the Review recommended a 'step change' through the imposition of a statutory time limit of 120 days from arrest to case disposal (Recommendation 15). The under-utilisation of diversionary measures was also identified as an issue in the Review. A greater use of diversionary approaches was advocated as one of the means of addressing delays within the system, and to target resources towards more persistent and serious offending:

There is no doubt that diverting minor offences from formal proceedings frees up court and youth justice professionals' time to focus on more serious and persistent offending...it is important to emphasise...that without diverting a considerable amount of cases from formal court proceedings, we cannot see how sufficient resources can be released for tackling this endemic and damaging problem. (Youth Justice Review, 2011:43)

As well as addressing the problem of delay, the Review's proposals encouraging greater use of diversion, were aimed towards ensuring that young people were diverted from the system at an earlier stage to minimise the recognised negative impacts of system contact. The Review recommended the development of a 'triage approach' that would allow for swifter action and the provision of services if required but would not necessarily entail further involvement in the criminal justice system. At the time of the Review, the recent decline in referrals to Community-Based Restorative Justice (CBRJ) initiatives following the introduction of a protocol requiring police reporting was noted and the potential for CBRJ initiatives to deal with lower-level offending was advocated (Recommendation 6).

A greater use of diversion was also recommended to address issues of proportionality for young people in the justice system. For instance, the Review team noted that the level of involvement with the system and the range of activities required for children who had received 'diversionary' youth conferences was often similar than for children who had received 'court-ordered' youth conferences, thereby undermining the so-called diversionary character of these conferences. As well as addressing the issues of proportionality, and in particular, where children were subject to multiple conferences (Recommendation 10: b,c); the Review team

recommended that 'diversionary' youth conferences should be renamed 'PPS-ordered' conferences in order to reflect the fact that they did not entail diversion from the system itself (Recommendation 13).

Recommendation: 6	The aims of the youth justice system should reflect the principle of proportionality and include a presumption that low level offending should be dealt with by parents (with support where necessary), school and communities or through a police disposal. This will require: <ul style="list-style-type: none"> a) The introduction of triage (or similar) at the point of arrest; b) Building on the successful practices of community based restorative justice schemes; c) The extension of police discretion while ensuring adequate safeguards; d) Greater use of police warnings and cautions for offences that would otherwise be dealt with through more formal challenges.
Recommendation: 7	To improve efficiency and reduce delay, we also recommend: <ul style="list-style-type: none"> a) Examining the high proportion of 'No Prosecution' cases with a view to removing them from the formal system at an earlier stage; b) Monitoring the impact of the PPS initiative to process diversionary disposals more speedily; c) Improving PPS written communications with children and their parents.
Recommendation: 10	The success of the Youth Conferencing approach should be built on by: <ul style="list-style-type: none"> a) Maximising direct victim participation rates; b) Ensuring conference outcomes are proportionate and relevant to the offending; c) Reducing the time taken from arrest to conference disposal; and d) Ensuring coordinators use their discretion to return to court those cases which in their professional judgement would be better dealt with formally.
Recommendation 13:	Urgent attention needs to be paid to driving down the time taken for all diversionary disposals, in particular diversionary youth conferences, which should be named PPS ordered youth conferences. The process should be closely monitored, with the use of appropriate targets, by the Criminal Justice Board.
Recommendation 14:	Work to tackle the problem of delay should prioritise young offenders. The lessons learnt should then be applied to the adult criminal justice system.
Recommendation 15:	Statutory time limits should be introduced for all youth justice cases, providing for a maximum period from arrest to disposal of 120 days. This provision, which should include protection for victims from injustice in cases where the time limits are exceeded, should be contained in the next Justice Bill and thereafter implemented within 12 months to ensure all agencies have enough time to prepare. The Criminal Justice Delivery Group and all relevant agencies should find the means to significantly reduce the time taken in advance of the legislation. The Criminal Justice Delivery Group, together with the Judiciary, should oversee and be held to account for delivering the time limits.

Given the overlapping issues concerning the development of diversion, both to avoid the negative impacts of system contact and to address delay, the following section considers the extent to which the Recommendations of the Review have been taken forward and progress and developments since the Review. The impacts of delay are also considered in the subsequent section on Bail, Remand and Use of Custody.

Diversion and Youth Engagement Clinics

The recommendations of the Review which advocated greater use of diversion were accepted (Recommendation 6). This aspect of the Review, (Recommendation 6a), has largely been taken forward through the establishment of Youth Engagement Clinics, which are characterised as a diversionary approach and a means to tackle delay. Youth Engagement Clinics are a 'tripartite initiative' involving the PSNI, the PPS and the Youth Justice Agency (Graham and Liddicoat, 2020). The Clinics were introduced on a pilot basis in 2012, and fully rolled out across Northern Ireland in 2015. At the time of the pilot concerns were raised regarding the extent to which YECs could be considered to divert children from the criminal justice system:

We believe that the operation of diversionary measures at present does not have enough emphasis on, where possible, diversion **out of** the formal criminal justice system. Rather than diverting young people away from one part of the criminal justice system to another part of the same, damaging system. We do not believe that the concept of 'diversion' as recommended by the Criminal Justice Review has been realised... (Children's Law Centre, 2014:5)

Some of these concerns were echoed in CJINI's assessment of the extent of implementation of the Review's recommendations (CJINIa, 2015). The Inspectorate noted the fact that a high percentage of outcomes from YECs involved young people being issued with cautions and informed warnings, leading them to query whether 'value had been added' in these cases, given that they could have potentially been dealt with without recourse to a clinic at all (CJINIa, 2015: 23).

Referrals to Youth Engagement Clinics are received from the PPS after a consideration regarding whether the case is suitable for diversion from prosecution. For their cases to be processed via YECs, young people must admit to the offence/s. The latest data on referrals to the YECs shows that of the total referrals to the PPS in 2019/20, 45% of cases were deemed suitable for resolution through the youth engagement process (Graham and Liddicoat, 2020). The most common outcome for cases referred to YECs was a youth conference plan (40%). Informed warnings and restorative cautions were the next most common outcomes (20.6% and 17.0% respectively). In 2019-20 the median time taken for cases to reach completion through the Youth Engagement process was 49 days (Graham and Liddicoat, 2020).

Respondents from the Public Prosecution Service, one of the key agencies involved in Youth Engagement Clinics viewed the development of YECs positively, comparing them to what had previously occurred within the system:

We had a real problem which was that cases that were potentially suitable for diversion maybe had to go to court, and were being diverted away from court, so you had the delay of, you know the issue of the summons for the child to attending court. So to my mind the Youth Engagement Clinic was a big step forward in terms of taking children out of that loop of going into court and then being diverted out...It certainly has reduced court lists ...our court lists in general are down. The Youth Engagement scheme from my perspective is a fantastic scheme because, one of the beauties of it is that a child that has been reported, has been arrested and is being reported to PPS is given a date on which they're going to find out what the outcome is So they're going to their Youth Engagement Clinic date and they're going to find out, and perhaps even have the whole thing dealt with on that date. It's a great scheme from that perspective because it is definite timeline for a child. (PPS)

In addition to addressing the issue of delay in cases considered suitable for diversion, respondents from the PPS also viewed the YECs positively in terms of provision of supports to young people:

One of the additional things that we saw with Youth Engagement was the availability of voluntary supports, so in a case where we felt the child maybe needed a wee bit more offered to them, than just a warning or a caution... [they] were able to be offered additional supports on a voluntary basis, so it was quite you know...from a child's perspective there are people that are taking quite a holistic view at that Youth Engagement Clinic. (PPS)

While the YECs are described as diversionary, the outcomes for some young people still entail significant involvement with the youth justice system. For example, for young people who are made subject to a youth conference plan, this could involve extensive contact with the Youth Justice Agency, who retain oversight of these plans. Questions concerning the diversionary nature of YECs and their compliance with children's rights principles, which advocate minimal system contact, were raised by some of the respondents that we interviewed:

Youth Engagement Clinics are a diversion from court, but not a diversion from the system, and that's my frustration, but the Review, and children's rights standards about the involvement of the criminal justice being a last resort and that we need to divert young people from the system, not just from courts. So my frustration with some of the initiatives like youth engagement, is they don't do what children's rights standards tell us to do, which is to divert young people from the system. (NICCY)

For young people who receive informed warnings and restorative cautions, contact is more minimal. However, as noted, there is still an element of interaction with the system, and moreover these disposals are recorded on a young person's criminal

record, with potential longer-term implications for them in the future (see p.66) for a further discussion on criminal records). This, for one participant, reinforced the point that not all diversionary interventions are in fact diversionary:

I think we think we divert young people out of the system but in my opinion we divert them in such a way that they still have something on their file, and it may not actually be a criminal offence but there still is something on their file which is held on their file forever and never goes away and that to me is not diversion ... diversion for me is that we should just keep the young people out of the system (Voluntary Sector Representative)

Furthermore, the characterization of the model as 'a clinic' arguably, elides some of the criminal justice implications for young people and their families. Given these potential ramifications it is important that young people receive legal advice before making an admission. The low numbers of young people accessing legal advice was raised as a concern by CJINI during the pilot phase (CJINI, 2015). The latest data shows that legal representation was present or legal advice was received prior to YECs in less than a fifth of cases in 2019-20 (19.9%), whereas legal representation was offered and declined by families in almost three-quarters of cases (80%). There are also concerns that without legal advice children will not have a full understanding of the longer-term consequences of making an admission of guilt. Previous research has noted that in this context young people and their parents may be more reluctant to seek legal advice, precisely because they view the intervention as diversionary and of less consequence (Carr et al, 2015). Therefore, while the establishment of YECs addresses some of the Youth Justice Review's recommendations concerning delay, the problems identified by the Review regarding the framing and constitution of 'diversion' – i.e., who is responsible for diversion and what are young people being diverted from – remain live concerns.

Furthermore, while the YECs have been the most prominent development in respect of 'diversion', other aspects of Recommendation 6 have not advanced. The Inspectorate considered that recommendation **6 (c)** (the extension of police discretion) had not been achieved and that **6 (d)** (greater use of police warnings and cautions) had been achieved but with some caveats – notably that there was insufficient oversight of the use of discretion on the part of the police and that while referral to the YECs did lead to greater use of warnings and cautions this was a more formal process than the Review recommendations had envisaged. The CJINI also observed that while some work had been done regarding the broader sustainability of CBRJ schemes (**6b**), there was some evidence that the operation of YECs, which were dealing with lower-level offending, was leading to less referrals to community-based projects:

The Youth Engagement Clinic's success at dealing with young people directly, meant referrals were not routinely being made to restorative justice schemes. (CJINI, 2015a:23)

These observations by CJINI echo the points made about the 'diversionary' nature of measures that have been developed and the extent to which the Youth Justice Agency has occupied this space, when arguably a greater involvement of community-based approaches would mitigate the impacts of system contact and achieve a greater diversionary effect.

Youth Conferencing

The unique place of youth conferencing in Northern Ireland's justice system was noted positively by the Review. However, several recommendations were made in respect of conferencing to 'build on the strengths' of this system (Youth Justice Review, 2011:10). At the time of the Review youth conferencing was the main mode for dealing with young people in the youth justice system. However, as the Review noted this form of intervention involved extensive system contact for some young people. There were issues with the length of time taken for cases to be completed, concerns regarding proportionality (particularly when young people were subject to multiple conferences), and a lack of distinction between 'diversionary' and 'court-ordered' conferences in respect of the level of contact with young people and their experiences of the process. **Recommendations 10 (b,c) and 13** of the Review dealt specifically with these concerns.

The Review's recommendation that 'Diversionary' youth conferences should be renamed as 'PPS-Ordered' conferences to reflect the fact that they were not diversionary was not accepted on the basis that it:

... would cause significant technical problems for records management systems, including Causeway, for a minor presentational gain. (Department of Justice, 2012:25)

Whatever the merits or otherwise of this assertion, it is certainly the case that the numbers of youth conferences (both court-ordered and diversionary) taking place in Northern Ireland since the Review has fallen markedly. This relates in part to fewer young people coming through the system, greater numbers of young people being dealt with through the Youth Engagement route, and a broader sense in which over time youth conferencing has been decentered as the main mode of the Youth Justice Agency's activity. This view was conveyed by the respondents from the Youth Justice Agency:

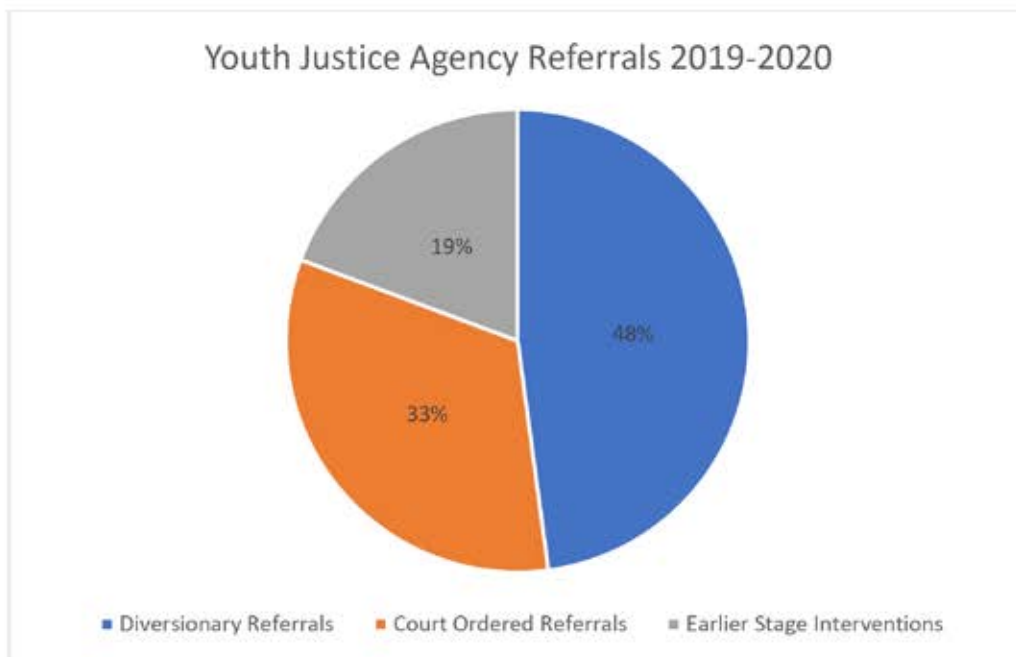
Youth conferencing...was the only show in town for a long time ...There is never only one best way. It has to be a range of interventions that are used with children, and

particularly part of that whole ethos, which was in vogue at the time, so nobody's fault as such, was the whole notion of reintegrative shaming. That has completely gone from our work at this point because it didn't sit well with children. It didn't sit well with me. The other part of the model of practice is looking at being much more flexible when it comes to the youth conference process. It was quite a process-driven piece of work... and that was more to do really with the way that the legislation was interpreted in the past, rather than the legislation itself, which actually was an excellent piece of legislation, it was just interpreted in a very narrow way, (Youth Justice Agency)

Youth Justice Caseloads

The latest Youth Justice Agency Workload Statistics show that the Agency received 1,631 referrals in 2019/20, and that 'diversionary referrals' accounted for the greatest proportion of referrals (41.9%). Court ordered referrals constituted 28.7% of referrals and what are described as 'Early Stage' referrals accounted for 16.9% of the Agency's work in the past year (Brown, 2020).

Figure 2: Overview of Youth Justice Agency Referral Types 2019-2020



The data provided in the workload statistics does not distinguish the type of diversionary referrals (i.e., between diversionary youth conferences or other YEC outcomes such as informed warnings and cautions). However, available data on Youth Engagement Clinics shows that a youth conference was the outcome in 40% of cases (Graham and Liddicoat, 2020). Therefore in 2019-2020 there were approximately 274 referrals for diversionary youth conferences. This contrasts with 658 diversionary youth conferences referrals in 2010 (based on data cited in the Youth Justice Review, 2011:44), a reduction of almost 60%. Court ordered referrals,

which include court ordered youth justice conferences and custodial referrals have almost halved since the period of the Youth Justice Review (NIAO, 2020), and as identified in the previous section the scope of the Agency's early intervention work has increased.

The Persistency of Delay

Notwithstanding the overall reduction in numbers, issues of delay persist within the system. Even though the Department of Justice accepted the Review's **Recommendation (15)** of a statutory time limit and committed to introduce this into law, this action was ultimately not taken forward. One of the respondents from the Human Rights Commission that we interviewed observed a 'degree of resistance' on the part of the Department towards introducing statutory time limits into legislation. Reflecting more widely on the entire criminal justice system, as issues of delay are endemic across both the youth and adult system, they noted:

I think there's a fear amongst the Department for Justice that it's too blunt an instrument and if they do it the problem is there would then be a number of people who would then be released because they failed to do it in time, and it would only take one case to appear on the front page and it would look like the inertia of the criminal justice system, so again an inherent caution. (NIHRC)

Some of the efforts to tackle avoidable delay were noted in the CJINI's assessment of the Implementation of the Youth Justice Review recommendations, and overall, the CJINI concluded that parts of **Recommendation 13** (driving down the time taken for Diversionary Youth Conferences) and **Recommendation 14** were achieved (CJINI, 2015a). However, the more recent Audit Office assessment of the operation of the youth justice system notes that while diversionary disposals may address issues of delay -

One of the benefits that diversionary disposal are believed to offer over court based disposals is that they are quicker. This can mitigate against the risks...associated with long drawn out court processes. (NIAO, 2020:21)

- it was not possible to assess whether this has been achieved based on the data available.

And although the numbers of young people being dealt with through the courts has declined since the period of the Youth Justice Review, the Audit Office reports that there has been 'no evidence of a significant improvement in the timeliness of completion' and in fact since 2014-15, there has been a 'generally deteriorating performance' in the time taken to process cases in the youth courts (NIAO 2020:9). Several respondents we interviewed expressed concern and a frustration that the problem of delay had not been further progressed since the Review:

Delay is still a huge issue, and if you look at the figures around delay of young people going through the courts, even though there are less young people going through the courts, the delay is unacceptably high, and there doesn't seem to be any mission of that delay being reduced to any significant extent. (NICCY)

[It] is particularly impacting on children, in some of the those cases it's worse than charge cases, and I'm thinking of the data, even the DOJ's own data in the last year showed that even though there were lower numbers in the system there's still disproportionate delays, and I really don't get why we can't do this better. (CJINI)

The impact of delay on children in custody was referred to, an issue to which the next section of this report turns, and as the impact of the public health restrictions become evident on case processing, there is a wider concern that the persistent problem of delay will be further exacerbated.

Summary

The issue of delay was one of the most serious issues identified by the Youth Justice Review. A proposal to introduce a statutory time limit to address delay was never taken forward. Youth Engagement Clinics were established as means to deal with young people more quickly and to divert them from the Court system, which was a major source of delay. The YECs have addressed issues of delay to an extent, but they are not truly diversionary in the sense that young people are still processed through the youth justice system, and acquire a criminal record as a result. Furthermore, the lack of uptake of legal representation raises concerns about children's rights. Despite the reduction in the numbers of young people being processed through the courts issues of delay persist and have even become more problematic since 2015.

Recommendations

- **Criminal justice bodies and the Department of Justice should give effect to recommendations 6,7,10,13,14 and 15 of the Youth Justice Review and the recommendations from the UN Committee on the Rights of the Child in relation to delay²².**
- **The Department of Justice should urgently address the introduction of statutory time limits for all youth justice cases.**
- **Diversion should mean diversion away from the justice system and the development of non-criminal justice responses.**

²² Criminal Justice bodies here refers the range of bodies involved in the delivery of these recommendations. This includes the Youth Justice Agency, Public Prosecution Service and the PSNI.

- **The Department of Justice should ensure children’s right to a fair trial including in relation to all diversionary disposals and youth engagement clinics.**
- **The Executive should take steps to support community and voluntary sector to develop and deliver a full range of non-criminal justice restorative practice.**

BAIL, REMAND AND USE OF CUSTODY

A range of recommendations in the Youth Justice Review addressed the use of custody for children. The Review expressed concerns that custody was not being used as measure of last resort, particularly in relation to the placement of children in the Juvenile Justice Centre under PACE provisions and on remand. It also noted evidence of disproportionality in the use of custody, particularly for children with care experience. The Review recommended the expansion of bail provision for young people, an introduction of a statutory presumption of bail and that the use of safety provisions under PACE should be reviewed.

Recommendation: 8	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.
Recommendation: 9	Strict adherence to the statutory presumption of bail supported by: <ul style="list-style-type: none"> a) The provision by the Youth Justice Agency of bail information, support and supervision at the first court appearance, with co-operation from the police and the Public Prosecution Service, where there is a serious risk of a custodial remand; b) the application of relevant, proportionate and realistic bail conditions, but only where necessary; c) the participation of young people and their parents in the setting of any bail conditions such that they understand and fully accept their implications; d) the availability of an appropriate mix of suitable accommodation.
Recommendation 18:	The practice of using the Juvenile Justice Centre as a place of safety for PACE procedures for any child should be reduced to an absolute minimum through the measures outlined in this report (recommendations 8, 9 and 19). The number of PACE places in Woodlands JJC should be limited to one or two.
Recommendation 19:	Recommendation 19: Looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population.

In 2010/11 there were 551 admissions into the JJC (YJR, 2011). Admissions under PACE accounted for the greatest volume of admissions to Woodlands (constituting 62% of the total in 2010/11). While PACE accounted for the greatest number of admissions to Woodlands, young people on remand represented the highest proportion of the average daily population in the JJC:

Typically, in any one day, around three-quarters of the juvenile custody population is on remand, many of whom come directly from residential care. Most are neither serious or persistent offenders and most do not go on to serve a custodial sentence. (Youth Justice Review, 2011:54)

The issue of the high volume of remands was compounded by the delays in processing cases, which was identified as a serious concern by the Review.

Moreover, the Review team identified that most young people remanded into custody did not subsequently receive a custodial sentence (only 1 in 10 went on to receive a custodial sentence), and most were ultimately bailed. To address the evident over-use of remand the Review recommended greater use of bail supports, the application of appropriate bail conditions and greater provision of appropriate alternative accommodation.

Recommendations 8, 9, 18 and 19 were accepted and in 2012 the Department of Justice noted that the following implementation plans and progress:

- **Recommendation 8:** (Development of Appropriate range of accommodation): Would be subject to a Scoping Exercise due for completion in 2013.
- **Recommendation 9:** (Bail provisions): The Youth Justice Agency would implement a Bail Information Scheme (BIS); the recommendation re. bail conditions would be advanced through a Law Commission Report; the provision of mixed suitable accommodation would be subject to the consideration of the Scoping Exercise.
- **Recommendation 18:** (Use of PACE): This was identified as an ongoing issue that required resolution.
- **Recommendation 19:** (Looked After Children in Custody): A joint protocol between the DoJ and DHSSPS was being developed to address the placement of children from children's homes in the JJC.

Progress since the Review

Three years later, when the CJINI assessed the extent to which the Review's recommendations had been advanced, it concluded that **Recommendation 8** had not been achieved, and in fact the most recent data showed an increase in PACE admissions since the time of the Review. The part of **Recommendation 9 (a)** relating to the development of a Bail Information Scheme was considered achieved, and while the proposed introduction of a Bail Act, was intended to address **Recommendation 9 (b)**, this had not yet been achieved. No progress had been made towards **Recommendation 9 (d)**, on the development of an appropriate mix of suitable accommodation to prevent detention of children in custody, and: 'There was no concrete date for implementation of this recommendation.' (CJINI, 2015a:32). Similarly, the Inspectorate considered that **Recommendations 18 and 19** had not been achieved (CJINI, 2015a).

There has been a general decline in the numbers of individual children admitted to custody in the period since the Review (NIAO, 2017;2020), and the most recent data shows a continuing trend. In 2019/20 126 children were admitted to Woodlands over the course of 12-months, however some of these children were admitted on multiple occasions. The Youth Justice Agency's Workload statistics shows that there were 298 *admissions* to the JJC in 2019/20 (Brown, 2020), and while this still

demonstrates a downward trend, there is evidence of significant 'churn' for some young people. The issue of PACE admissions persists and in fact has become more acute. PACE admissions accounted for two-thirds of the total in 2019/20, compared to 58% of admissions in 2015/16. Young people on remand accounted for 31.9% of admissions and young people on sentence, just 2% of admissions (Brown, 2020). Therefore, while the overall population of the JJC has declined over time, the issues identified by the Review have become more acute. Further still, the proportion of children in care has increased over time accounting for more than half of all admissions in 2019/20 (Brown, 2020).

Intractable Issues

Respondents that we spoke to about the Review recommendations concerning custody, bail and the use of PACE and remand expressed frustration that these aspects of the Review had not been sufficiently advanced in the intervening years. The continued over-representation of children in care and with care experience within the Juvenile Justice System was identified as a specific cause for concern, particularly given the proportion had increased in the period since the Review:

I mean the figures, and those numbers of children in custody, who have come from care, who are not sentenced... is unacceptably high... and still we haven't sorted this out, and we're still not further forward. (NICCY)

Some respondents attributed some of the specific issues in this area to the capacity of the care system to deal with children and young people whose behaviour was presenting challenges:

[It is]...symptomatic of how a residential homes, and residential services, are not getting the supports they need to work with the most challenging children. (NICCY)

Given the prominence of the plans for Repurposing Woodlands (discussed in the following section of this report), some respondents considered this as the means to address some of the intractable issues around custody. In particular the outstanding issues regarding the continued use of PACE and over-representation would be addressed eventually both in relation to joint campus provision and legislation which would 'sweep up' these outstanding issues:

But what we are looking towards is, looking at and maybe we will put it in inverted brackets, 'Children's Justice Bill', which will sweep up a lot of the changes that will need to happen. that will obviously also take account of a lot of the issues that we've heard over the years around bail, remand, PACE etc. So, in short we don't know what exactly the legislation will look like going forward, but we know that there's going to be, at the very least a change in almost the heads of the legislation about where children will go, but I expect that it would be much more than that. I would hope ambitiously that it would be much more than that insofar as, you would have heard, probably as many times as I would, that there's legislation that needs to be

looked at for PACE, bail, remand etc., etc. So, we hope to sweep all of that up and draw on the best practice that we've seen out and about across our travels over the next few years. (Youth Justice Agency)

The prospect of future legislation will obviously require a political commitment to progress these issues. Furthermore, the successful implementation of legislation to address areas such as the over-use of PACE would still require some form of alternative provision such as more robust bail supports, and meaningful alternatives to custody such as the Review originally envisaged.

Ending the Placement of Children in Prisons

Recommendation: 16	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. As part of this, suitable options for accommodating a very small number of dangerous young offenders will need to be explored.
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At the time of the publication of the Youth Justice Review nine young people under the age of 18 were detained in the prison system at Hydebank Wood. As the Review noted, this situation contravened children's rights principles that children should not be detained in custodial settings with adults. **Recommendation 16** of the review was accepted and by 2012 the Department of Justice reported that following 'co-operative work with YJA, NPS and sentencers, there are no longer any under-18s at Hydebank Wood' (DoJ, 2012: 26). The Department also expressed a commitment that no under 18s would be held in the prison system 'save in the most exceptional circumstances', further stating:

Detailed work has been done to ensure exceptional circumstances are carefully defined so as to minimise the risk that under-18s will need to go to Hydebank Wood in the future. (DoJ, 2012:26)

It is evident from the above that through this 'exceptional circumstances' proviso, the government did not wish to permanently close off the possibility of children being detained in the prison estate in the future. In its assessment of the implementation of the Youth Justice Review's recommendations CJINI (2015a) noted that since 2012 and following from the development of guidelines for sentencers by the Northern Ireland Courts and Tribunal Service, no children had been placed in Hydebank Wood, but that children's rights groups continued to monitor this area. As such, CJNI considered the implementation of this recommendation to be achieved. However, the fact that this issue has not been completely removed as a possibility was considered a cause for concern for some of the respondents we spoke to:

I think some of what happened was, the Youth Justice Review took place, I think there as one or two things that perhaps were resolved quickly and others that just

tended to sit and it needed further attention and further impetus that the Youth Justice Review on its own didn't get over the line, it needed other things, I mean and again an example of where we think things have improved but where they have not been fully completed was the issue of not detaining children and young people under 18 in Hydebank. There were small numbers, and the numbers got smaller, in the last few years I don't think any person under 18 has gone into Hydebank, but we were looking for legislation to make it clear that under no circumstances could it happen. The Department has never introduced that legislation, now we have had no Assembly for three years, but they were prevaricating even before then. They seemed to take the line that well ... we're not putting people in but we have to retain it as some kind of measure of last resort, we, trust us we're not going to use it. Well, I think we prefer them to not have the temptation there in the worst possible circumstances. So there hasn't been as far as I am aware in the last four or five years anybody who has been transferred but we would like to put that beyond doubt. (NIHRC)

Complexity of Legislative Change

Respondents from the Youth Justice Agency told us that when the question of legislation was previously looked at, it was considered too complex to take forward at that time:

Back in late 2014 we were looking just generally at legislation and specifically looking at whether we could develop legislation to formally keep children out of Hydebank. You probably will recall that, and the more we looked at the legislation, the more we pushed at it, the more complex it became. (Youth Justice Agency)

Interestingly, however, the Youth Justice Agency described this scrutiny of legislation at the time as one of the drivers towards the development of the Scoping Study, and eventually towards plans for repurposing of the Juvenile Justice Centre, an issue we turn to in the next section of this report. One respondent expressed the view that the fact that no children had been placed in Hydebank since 2012 should provide the necessary evidence that passing legislation to 'copper-fasten' this issue should not be a cause for concern:

It was always intended to be copper-fastened...but I don't think there would be any...with all those years having past, and it's not causing any problems, that people said it would cause. I think that the political opposition to that will have largely disappeared. (Former Special Advisor)

In other words, the demonstrable effects of action already taken could be seen as a leverage for further reforms, and given the fact that legislative reform is now back on the table, this may be an opportune time to press forward on this particular issue.

Summary

The overuse of remand and the placement of children into custody under PACE provisions still remain areas of concern. While the overall numbers of young people in custody have declined, there is continued over-representation of some groups, specifically Looked After Children. The recommendations of the Review concerning the development of alternatives to custodial remand have not been advanced, and such lack of alternatives remain a fundamental weakness in provision. Young people are no longer detained in adult prisons in practice, but there is no legislative provision against a young person being placed in an adult prison if there was considered an exceptional basis for doing so.

Recommendations

- **The Executive, key government departments and criminal justice bodies should give effect to recommendations of Youth Justice Review (8,9,18,19) and those from the UN Committee on the Rights of the Child in relation to bail, remand and the use of custody.**
- **The Executive, key government departments, criminal justice bodies should ensure compliance with children's rights standard that custody should only be used as a measure of last resort.**
- **Health and Social Care Trusts should discharge their statutory duty to provide suitable and appropriate accommodation to enable young people to perfect bail.**
- **The Youth Justice Agency should evaluate the impact of bail information schemes in order to ensure that they are meeting the needs of children and young people and reducing the use of custody.**
- **The Executive and key government departments should take urgent steps to address the over representation of certain groups in custody, including care experienced young people, those with mental health needs, those with special educational needs and disabilities and Catholic young people.**
- **The Executive should introduce legislation to ensure that no child could ever be detained in the prison system.**

CRIMINAL RECORDS

The Youth Justice Review noted the negative consequences of a criminal record for young people with regard to labelling and access to future education and employment prospects. The expansive nature of the criminal record regime in Northern Ireland, which included 'diversionary' disposals was criticised, and the Review recommended that existing legislation should be reformed to reflect principles of 'proportionality, transparency and fairness' (YJR, 2011:85).

Recommendation 21	Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include: <ul style="list-style-type: none">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 to challenge, should be established. The decision to disclose and the assessment on which it is based, should be regularly reviewed.
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A review of the criminal record regime in Northern Ireland took place at the same time of the Youth Justice Review (Sunita Mason's review on criminal records) (Mason, 2011; 2012), so the Youth Justice Reviews' recommendations were not accepted pending the outcome of this review. The Mason Review of the criminal records regime was prompted by legal challenges, including a Northern Ireland case in the European Court of Human Rights in relation to Article 8 rights (right to respect for private and family life) regarding the disclosure of police caution data.²³ Following the legal ruling and the publication of the Mason Review, the Department of Justice introduced legislation that provided for the 'filtering' of certain 'old and minor' offences from a person's criminal record. This scheme came into effect in 2014 through amendments to the *Police Act 1997*. However, the limitations and complexity of this scheme were criticised; for instance, this legislation limited the number of offences that could be filtered (leading to a disproportionate effect on children who had committed multiple offences), and the range of specified offences that were not eligible for filtering were too expansive. While the scheme adopts a graduated approach for records acquired as a juvenile (through the application of shorter time frames), this still falls far short of the original recommendations of the Youth Justice Review, which advocated a 'clean slate' approach (Carr et al, 2015; NIACRO, 2015).

²³ M.M. v. the United Kingdom [ECHR 24029/07]

Subsequent amendments to the criminal record regime in the *Justice Act (NI) 2015*, established a review mechanism allowing for an individual, in certain circumstances, to seek a review of their case where a conviction or disposal has *not* been filtered from their criminal record certification. The role of an Independent Reviewer was established in legislation to carry out this function.²⁴ In 2020, following a United Kingdom Supreme Court ruling further changes were made to the criminal record regime in Northern Ireland.²⁵ This removes the limitation on the number of offences that could be filtered and provides a mechanism whereby any offences committed by a person under 18 and which were subject to diversionary or out of court disposals, will be considered by an Independent Reviewer *before* being subject to disclosure.

Accordingly, before the issue of a certificate, the Independent Reviewer (IR) is required to consider all non-court disposals received when an applicant was under 18, irrespective of whether an applicant has convictions or has received disposals after the age of 18. If following review, the IR decides that information should be subject to disclosure, AccessNI will ask the applicant if they wish to make representations for consideration by the IR before a certificate is issued. Representations must be made in writing. Time limits have been established for this process and are outlined in **Table 4** below.

Table 4: Process and Timeline for Criminal Record Review

Stage	Timeline
Individual seeking review must apply to Access NI.	Within 90 calendar days of the date the certificate was issued.
IR will review the case and inform Access NI of their decision.	Within 28 calendar days (where practicable) of receiving the request from Access NI.
In cases subject to automatic referral, where IR decides to disclose information, AccessNI will respond to the applicant and seek representations.	AccessNI to respond to applicant within 7 calendar days, and seek representations within 14 calendar days.

Source data: Department of Justice (2020) *Guidance for the Operation of the Criminal Records Filtering Review Scheme*. Belfast: DoJ.

²⁴ The legislation also provides for the role of an Independent Monitor (this role can be combined with the Reviewer) function. The IM reviews a sample of the enhanced criminal record certificates issued by the Disclosure and Barring Service (DBS) for quality assurance purposes.

²⁵ R (on the application of P,G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2019] UKSC3.

Guidance issued by the Department of Justice (2020) outlines the factors that should be taken into consideration by the Independent Reviewer when deciding about what information should be disclosed in a criminal record. These include the nature of the position being applied for; the seriousness of the offence; the date of the offence and the age of the applicant at the time of the offence. With reference to records acquired as a juvenile, the guidance specifically states that the 'best interest' principle should be the primary consideration in these cases. However, it is unclear how this 'best interest' principle applies when a person is over 18 and their record was acquired as a juvenile. Where the Independent Reviewer concludes that information should not be disclosed, they are required to inform the police, and provision remains under the relevant legislation (*Section 113B (4), Police Act, 1997*), for a chief officer to include information on the certificate where they 'reasonably believe it to be relevant for the purpose for which the certificate is sought' (DoJ, 2020: 11). While there is a clear expectation that this would only occur in exceptional circumstances, it nonetheless provides a route through which information (including police intelligence) could be disclosed in a criminal record. The scope of such regimes and the level of discretion involved has been subject to wider critique (e.g.: Grace, 2014).

The last Annual Report of the Independent Reviewer covering the period 1st April 2019 to 31st March 2020 (and produced before the most recent changes to the regime came into effect), provides information on the number of cases reviewed including 'auto-referrals' (i.e.: where the criminal record information was acquired before the age of 18). With 463 automatic referrals these constitute the largest proportion of cases (77%). Of these automatic referrals, information relating to juvenile offending was removed in 85% of cases on the grounds that:

These cases related mainly to minor offences which had been committed a number of years ago with no further offending behaviour. (Independent Reviewer Annual Report, 2020:4)

However, information relating to juvenile offending was retained in 68 cases (15% of the total) on the following bases:

The decision to retain information was made after careful consideration of the seriousness of the offence, the age of the offence and a diligent assessment of the potential impact of disclosure. The majority of these cases involved offending that had happened recently. A small number of these cases did however involve historic offending. In these cases the nature of the incident was so grave that disclosure was required in order to ensure that the safeguarding of children and vulnerable adults was protected. (Independent Reviewer Annual Report, 2020:4)

In auto-referral cases applicants are invited to make representations seeking a review of a disclosure (see **Table 4** above). 65 representations were received in the reporting year, and in two cases representations were successful.

The United Kingdom Supreme Court ruling in January 2019, which found that the multiple conviction rule and the disclosure regime in relation to youth reprimands and cautions was disproportionate, has necessitated legislative change to the criminal record regime in England and Wales. These changes effectively mean that in England and Wales diversionary disposals received as juvenile will not ordinarily be subject to disclosure. The role of the Independent Reviewer is specific to Northern Ireland, and the current system, while allowing for automatic referral *still provides a mechanism through which juvenile diversionary disposals can be subject to disclosure*. In fact, the Independent Reviewer notes that she would consider the blanket non-disclosure of diversionary disposals to be 'risky' and would not advocate such an approach. She further observes:

In the current reporting period a small number of very serious cases involving sexual offences have been referred to me. In these cases applicants have received diversionary disposals for offences such as 'inciting a child under 13 to engage in sexual activity'. Diversions in these cases were disclosed as I could not be satisfied that the safeguarding or protection of children and vulnerable adults would not be undermined. (Independent Reviewer Annual Report, 2020:8)

The government has committed to reviewing existing legislation and the operation of the current scheme. This includes a review of the list of specified offences (i.e., those that can never be filtered), as well as legislation to take into account the Supreme Court ruling.

Summary

It is evident that there is still some distance between the recommendations of the Youth Justice Review, which advocated that diversionary disposals should never be subject to disclosure and the establishment of a process allowing for people to 'wipe the slate clean' in relation to juvenile offences (with some safeguarding exceptions), and the system which has evolved over the period since the review. The concerns articulated in the Review, regarding the potential contradictory rationales of diversionary disposals ostensibly aimed towards reducing the impact of system contact and a criminal record regime oriented towards public protection, have not been resolved. Furthermore, the system as it has evolved is complex and there are concerns regarding children's' (and their parents, guardians and advocates') understanding of these processes and therefore the implications concerning informed consent for particular disposals. The system in Northern Ireland contrasts with most European countries, where records for juvenile offending are never disclosed and/or are sealed and it remains in contravention of children's rights standards which advocate such an approach.

Recommendations

- **The Executive should bring forward legislation to give effect to all aspects of recommendation 21 of the Youth Justice Review and recommendations of UN Committee on the Rights of the Child, in relation to criminal records.**
- **In particular this includes recommendation 21a of Youth Justice Review to ensure diversionary disposals do not attract a criminal record or be subject to employer or more general disclosure.**
- **The Department of Justice should develop an awareness raising programme with young people to ensure understanding of criminal records processes and arrangements for filtering.**

DEVELOPMENTS SINCE THE REVIEW

Scoping Study

In 2016 a Scoping Study was prepared by officials in the Department of Justice and the Youth Justice Agency for the Minister for Justice detailing suggestions for reform. Explaining the context of the decision to carry out the Scoping Study, representatives from the Youth Justice Agency told us:

And the idea was to bring them together and to have an informed discussion about, if [we] were starting again, so to speak, how would you approach this? Obviously, we had a lot of information there, so we are not starting completely again. (Youth Justice Agency)

The Youth Justice Agency told us that the elements of the Scoping Study were aimed at addressing three aspects or 'legs of the stool' of reform that the Minister wished to see taken forward:

He said, I want early intervention, I want people to be intervening earlier, and at the most appropriate time, with the most appropriate supports. So that was one of the legs of the stool. ...The second was that he felt, based on views that we had expressed and the feedback that he was getting that the legislation itself was quite complex, needed refined, needed to be more meaningful to end-users, particularly young people and families...So we needed to look at it, and look at some of the rubbing points...such as bail, remand, PACE, etc. So he asked us to look at the legislation as the second leg of it. And then the third one was, at that point to look at Woodlands, and could it be repurposed...to move it away from being essentially a custodial facility to be one that was looking much more at the needs and wellbeing of vulnerable children.

The subsequent Scoping Study document was never published, but the substantive elements of the proposed reforms were detailed in a Ministerial statement to the Assembly in March 2016. Some respondents expressed frustration at the pace of change in the intervening years, and their view that key aspects of the Review had never been taken forward:

...the Scoping Exercise, I mean how many years has that been going on? Like I ... suppose, that where we are now, is, where we are now in terms of that merger ... but it goes to show, like youth justice it moves very slowly, but you have to ask yourself, why is that? You know, could it just, could it just be a lack of resource or is it a cultural issue, why, is it a risk issue...or why is that? (Voluntary Sector Representatives)

Some respondents were of the view that the impetus behind implementing the Review's recommendations had 'run out of steam' and that some of the issues had

been funnelled into the Scoping Study, but that ultimately in the absence of legislature further progress could not be made:

Well, it rather ran out of steam and that's what we were saying in December of 2015. ...At that stage the Minister of Justice at that time said there was going to be a Scoping Study. Now I don't know if it was done and not published or not done, but we've never seen it. That's a fail within the system and we asked for it to be cleared, and I think just priorities have moved on, other things took over. We lost the Assembly for three years, and you know CJINI has said, in the last chief inspector's annual report he quite rightly said, with the loss of political scrutiny over what the operations were doing, and what the executive is doing, and what the DOJ is doing, there is far less concern about the risk of adverse exposure because you're not doing things you'd have to do, certainly that three-year hiatus in the Assembly was a big problem. (CJINI)

It is evident from the above, however, that while the absence of a legislature meant that legislation could not be enacted, there was still significant policy developments occurring within the youth justice space and there was a concern over the lack of political scrutiny.

Lack of System and Outcome Data

In 2017 the Northern Ireland Audit Office published a report on the Youth Justice System: *Managing Children who Offend (NIAO, 2017)*, which identified gaps in information including data on the impacts of services delivered by the Youth Justice Agency. The report also identified the need for a specific strategy to coordinate the delivery of youth justice services, policy and interventions, and the need to develop the capacity to monitor costs of services. The Northern Ireland Assembly was suspended between 2017 and 2020, so changes requiring legislation could not be taken forward. Following the reinstatement of the Assembly in 2020, the Department of Justice and the Youth Justice Agency agreed a strategic plan – *Transitioning Youth Justice* – to take forward the recommendations of the Scoping Study. In December 2020 the Audit Office published a follow up-report into youth justice system and cautioned the following:

Failure to address the issues identified in our previous report is likely to present a significant risk to implementing reform successfully. (NIAO, 2020:8)

However, the recent Audit Office report notes that the *Transitioning Youth Justice* document is not yet a comprehensive strategy, and to become one requires: Greater clarity on the evidence based that supports proposed reforms; definition of benefits that will be achieved from successful change and the establishment of a framework for monitoring success (NIAO, 2020). This strategy has not yet been published, and in recent correspondence the Minister for Justice described it as 'an internal document designed to provide the Youth Justice Agency and Departmental

officials with a strategic context for their work²⁶, that was developed in response to the first NIAO Report (2017). The Minister has now indicated her intention to develop the paper to meet the recommendation of the NIAO to develop *Transitioning Youth Justice* into a comprehensive strategy that would provide clarity and an evidence base for proposed future reforms, define the benefits that will be achieved from successful change and establish a framework for monitoring success.

Repurposing of Woodlands

These aspirations regarding the development of an evidence base, defining the benefits that will be achieved through reform and a framework for evaluating success, are all areas that are critical in terms of the proposed repurposing of Woodlands and the establishment of a Regional Secure Facility (NIAO, 2020). It was evident from the range of organisations and individuals whom we spoke to that the proposed repurposing is the current dominant issue permeating all aspects of consideration of the future of youth justice.

Many respondents considered the repurposing of Woodlands JJC to be a progressive development that addressed some of the systemic issues regarding barriers to interagency working and the over-representation of care experienced children in this part of the youth justice system.

What we're hoping to do is to join it up better, you know, because there is a lot of cross over for looked after children, obviously coming into the justice setting, and they are the same kids, you know, they're not just care kids or justice kids, they're the same children, they're the same, the same group, and they're just being divided by the system. So joining that up, would be a good thing, hopefully we'll achieve that at least, and accomplish and developing it. (Department of Health)

The proposals were viewed, in particular by those involved in the development of the campus plans, in the light of reduced admissions to the JJC over recent years, which was presented as part of the success of youth justice interventions broadly and specifically through the delivery of early intervention approaches. However, the links between early intervention initiatives and a reduction in numbers of young people further downstream clearly requires more robust data. This was an issue raised by some interviewees and is part of a broader issue with outcome data, that has been raised again in the recent NI Audit Office Report (NIAO, 2020).

On the other hand, some respondents expressed concern of the dominance of this issue within the policy space, and this view is echoed to an extent in the most recent Audit Office report on the youth justice system:

²⁶ Letter from Naomi Long to stakeholders re: NI Audit Office Recommendation on Youth Justice: Development of a Strategic Framework. 02.04.21

Other than the completion of the repurposing of Woodlands JJC by 2022, there is currently no clearly defined end-date design for how the entire youth justice system will work. (NIAO, 2020:29)

The Northern Ireland Audit Office reports that the overall budget for the Youth Justice Agency has fallen by a third since 2010-11 (from £22.6 million to £15.3million in 2018-19), but that despite the marked decline in the population of young people in the system, that because of the fixed nature of the costs therein, there has not been a commensurate reduction in the budget for custodial services. While the respondents in this report were keen to stress that they did not envisage repurposing as a 'cost-saving exercise', the wider economic considerations undoubtedly form part of the impetus for proposed repurposing. The NIAO makes this observation:

The recognition of the increased under-utilisation of this significant resource has been one of the considerations contributing to ongoing work intended to repurpose the facility. (NIAO, 2020:22)

The Youth Justice Agency and the Department of Health are keen to emphasise that the proposed repurposing is not a 'cost-saving exercise' however at the same time and both representatives from the Youth Justice Agency and the Department of Health referred to the potential for reinvestment of money into the community:

Well, it wasn't set out to be a cost saving exercise ... but when you do look at the cost, you know, at the end we have picked that out in our document upfront, and I can't remember what the costs are but they were like something like 9 million I think to run Woodlands, per year I think, somewhere around that, and something like 6 or 7 for Lakewood, and whenever we looked at that, and whenever we looked at that and thought that the community is the best place for these children surely there is a better way to divert that money into the community that would spend that better... (Department of Health).

...The aim...is that £7+ million that goes into Woodlands every year is better redistributed upstream to earlier stage and into the community, and so the idea is not, the cost-neutral is in so far as we're not looking for bells and whistles and huge importing of finances into this. What we're talking about doing is saying we have a budget there, how do we redistribute that budget so we get the services out there in the community equally as you would get down in Woodlands? So there will not be...the budget that goes to what you would see now as at Woodlands, the budget that goes to Youth Justice, which is in and around £15.5 million, if you look at that, that will still be there next year and the year after. (Youth Justice Agency)

While repurposing was as you know, initially meant to be about a custodial facility and a care facility merging into one and providing best practice for young people whilst in a campus. The campus is now being very much viewed as a Northern Ireland wide satellite provision, as well as being a facility located in Bangor, that's just a building, but the ethos of repurposing is much wider than that and has given us

really the vehicle to increase interagency work without any real cost, but all it's taken to make this work is the want to do it. (Youth Justice Agency)

However, at this point the outline of how this satellite provision would operate or indeed how funding from custodial facilities would be redirected towards the community has not been specified. Unsurprisingly, in the absence of a specific plan some respondents were unsure about how satellite provision would work or be funded.

No, I don't think that they understand what it means, I think some people are thinking of it as a kind of, I don't get it if a young person is in a children's home and if they break or they kick off with the staff and they shouldn't in Woodlands, get criminalised because they're kicking off, you know for a reason, but what I've heard them say there is that they will be brought into this community, satellite, or what do you know, which will be nearly secure and what more, so I don't think they kind of know, I don't think they really know. (Voluntary Sector Agency)

A respondent from the Justice Committee also expressed concern that the proposals were un-costed and the aspiration to develop satellite community provision was unclear. Further still, significant waiting lists to access Children and Adolescent Mental Health Services (CAMHS) meant that they were sceptical about how such provision would work in practice:

This is un-costed again. How can they say this is going to save money? It's not. We know the waiting lists for CAMHS is years, and so you've got a young person coming out of their intense, according to their consultation, therapeutic and they're going to get lots of support, education and all this and you then stepdown facility, whatever that looks like, no idea, because apparently it's going to be in the same area? So actually, is it different – who knows? And you go back into a community, where's the support coming from? Because they're not identified. And who is going to be responsible then if that young person gets put back into the community, and doesn't get support? Is it this elusive panel? Who is it? Who has responsibility? (Justice Committee Member).

Similar concerns regarding a lack of specificity within the proposals and a potential detraction from focus and investment elsewhere, including in early intervention, have been raised in several responses to the consultation on the proposals (Children's Law Centre, 2021; Include Youth, 2021; NICCY, 2021, VOYPIC, 2021).

The focus on repurposing and campus redesign has also meant that other issues which would be considered fundamental areas of youth justice reform (e.g. raising the MACR) have been left to one side. Some respondents simply noted that this area would not garner political support so therefore it was fruitless to focus on this. Others suggested that raising the MACR was a necessary part of the move to a more welfare-orientated approach. The campus redevelopment was clearly viewed as a

tangible area of policy delivery, which was emblematic of joint-working and had the potential to lead to future reinvestment in other services. Although, as noted some areas of the proposals as set out in the consultation remain quite speculative and beyond the plans to integrate services in the campus, it was unclear what other elements of delivery are actually in place.

Proposals for potential enhanced community provision, viewed by the *Review of Regional Facilities* (DoH, 2018) as a necessary pre-requisite for the development of the campus is still an area requiring further work. Of further concern is the fact that while costs are foregrounded in the Consultation document, and the proposed reinvestment in community services is floated, these areas lack specific detail. This view is supported by the recent NI Audit Office report which notes that costs have not yet been considered despite plans for repurposing to be completed by 2022:

There is currently no robust financial analysis of the cost of the proposed model. We were told that the Programme Board had intended from the outset that the new facility would be, as far as practicable, cost –neutral relative to the cost of current service provision. Whilst there had been some preliminary analysis of costs, there is no detailed analysis of the current cost of all the activities that will be subsumed in the new arrangements, nor the estimated cost of the future service model. (NIAO, 2020: 33-34)

Linked to this was how community partners would be identified, funded and governed, particularly if the work of the Youth Justice Agency moved away from secure provision and more into early intervention work. Some noted the importance of delivery/service providers being identified based on evidence and expertise.

PACE and Place of Safety

There appears to have been initial consideration given to removing the 'place of safety' status from the repurposed campus, thereby ending the route of admission on PACE grounds, which currently constitutes the largest proportion of admissions to the JJC (66% in 2019-20) (Brown, 2020). However, we were told that it was not possible to advance this proposal because there were currently no other alternatives in place. The 'Place of Safety' option has a particular impact on children in care as this is one of the routes through which they enter the JJC, where for example a child is arrested for offences that have taken place in a residential unit and the unit is refusing or is reluctant to accommodate the child pending their court appearance. We were told, however, that the geographical differences in rates of admission to the JJC (with children accommodated in Trusts close to Woodlands being more likely to be admitted there under PACE provisions), shows that there is scope for the development of alternative options, and that there are still large variations in practice across Trusts when it comes to this particular issue.

...If you look at the geographical spread of Northern Ireland as well, the ones closer to Woodlands tend to use Woodlands as a place of safety, but then the ones in the West, you know up in Derry or Strabane, or whatever, find alternative options. So what are they doing? (Department of Health)

There also was some reported confusion regarding the concept of a 'Place of Safety' and where responsibility lies regarding ensuring a looked after child appears in court. The Consultation proposal notes the intention to retain the 'place of safety' status of the regional campus, but refers to the desire to keep PACE admissions to a minimum, and notes that:

...the Campus design proposals also include satellite provision which may be used as a place of safety under the PACE order. (DoH/DoJ, 2020: 21)

Representatives from the PSNI have been involved on Steering and Working Groups for the planned regional campus, and we were told that there have been specific consideration of alternatives to placement of children in police custody suites or in the designated 'place of safety'. However, the current view is that there would be no other suitable facilities to place children if the 'place of safety' designation was removed, and any such move would require the development of alternative provision and legislative changes. While discussions had been ongoing with government departments and the PSNI, these discussions had been put on hold due to the demands of meeting the COVID response.

Over-representation of children in care

Some of the interview respondents noted that establishment of a regional campus would go some way to address the over-representation of children in care in the youth justice system, particularly where some children circulated between the two centres, and that by 'joining-up' services there was a possibility to provide a more integrated approach. The point raised by some participants and in the *Review of Regional Facilities* (DoH, 2018) is that an integrated model may mitigate against some of the effects of churning through the secure care system.²⁷ However, others were sceptical of this view:

The number of children in care, this revolving door of going in and out of one and the other. Well first of all, if you call it one centre, does this mean that the revolving door just gets put into one? (Justice Committee Member)

²⁷ Analysis conducted by a Working Group established to carry out an analysis of admissions of LAC in the four facilities (Woodlands, Lakewood, Donard House and Beechcroft), shows that over a five year period (between April 2014 and March 2019), 65 looked after children had between 5 and 9 admissions to one or more of the regional facilities, accounting for a total of 433 admissions; 18 children experienced 10 or more admissions, accounting for a total of 268 admissions. (DoH/DoJ, 2020:16).

While a regional campus may provide an integrated approach towards care of children irrespective of their admission status, it is difficult to see how the integration of the facilities and care model addresses the substantive issue raised in the Youth Justice Review regarding the over-representation of children in care in the youth justice system, and particularly within custodial settings.

Accommodation of Children with Mental Health Needs

The Consultation document notes that the proposal for a regional campus relates only to children who are subject to Article 44 (secure care) or justice proceedings. It does not include children compulsorily detained under mental health legislation. Initial consideration had been given to including this group within the plans (DoH, 2018), but because a separate regulatory framework would apply this was not considered feasible. This point notwithstanding, the Consultation notes that many of the children who will come under the remit of the campus will have a range of mental health needs. Furthermore the, *Review of Regional Facilities for Children and Young People in Northern Ireland* (DoH, 2018), had noted that therapeutic support services for children in Lakewood were under-resourced. The Consultation proposal outlines the intention for children placed in the regional facility to have 'access to mental health and drug and alcohol services appropriate to their assessed needs, and delivered by a multi-disciplinary team based in the Centre, working collaboratively with community-based services' (p. 19). However, there is no further detail on how these services will be delivered.

Capacity of the Regional Campus, Regulation and Integrated Provision

The Consultation proposal notes the intention for the regional campus to have a capacity of 46, which is a reduction in the current capacity of the Woodlands and Lakewood facilities (currently 64). There was a sense among some leading the proposals that if community supports were effectively implemented that fewer children would enter the facility and this may be one rationale for the reduction in capacity. This figure is based on the capacity usage of the facilities in 2018/19 and with the stated intention, in line with the UNCRC that the detention of children 'should be a measure of last resort'. The two centres are currently subject to different regulatory regimes and the Consultation notes that work will be undertaken to ensure that the regional campus will be subject to the same regulatory standards. The precise nature of these standards and their specifications was an issue of concern raised by some of those we interviewed, particularly those involved in inspection and human/children's rights oversight.

A broader issue of concern was noted amongst some respondents regarding the overall 'culture' of secure care delivery and the anticipated challenges of integrating staff teams from different disciplinary backgrounds who had been operating according to different practice models. We heard different views on this, with some

respondents voicing a concern that a 'justice' approach would be applied to children in care, while other respondents noted that the JJC had generally received positive inspections in contrast to some of the difficulties identified in the operation of Lakewood, and that aspects of this perceived positive approach to behaviour management would be potentially lost in an integrated model.

The Consultation proposes four possible models for accountability arrangements for the campus, including single departmental governance, joint departmental governance or governance under an Arms-Length Body (ALB) reporting to either one or both government departments. We did not get a sense in interviews as to the expressed preference of the agencies leading the proposal regarding the governance arrangements, but clearly the governance arrangements and funding allocations will be critically important elements of the initiative.

SUMMARY AND KEY FINDINGS

There have been significant policy developments in youth justice since 2015 as evidenced in Ministerial statements and in the advancement of proposals to develop a Regional Care and Justice facility. However, there are concerns about the underpinning evidence base, the proposed benefits and the mechanisms for monitoring performance within the youth justice system. The fact that key documents which have informed the strategic direction of youth justice have not been made publicly available is a matter of concern. This fact reflects a broader disquiet regarding the transparency of policy-making in this sphere. From 2015 onwards there was a view amongst some decision-makers that the recommendations of the Youth Justice Review, had been advanced as far as possible. However, the fact remains that key areas of the Review have not been taken forward, and subsequent potentially significant changes in strategic direction have not been subject to the same degree of critical scrutiny and oversight. As well as the evident abandonment of some recommendations (e.g. the development of alternatives to custodial provision), there is evidence of mission creep in other aspects, including within the domain of early intervention. All of the above suggests the need for a fresh strategic look at youth justice policy and practice. Our key findings are as follows:

1. Compliance with Children's Rights and Human Rights standards

The United Nations Convention on the Rights of the Child, and a range of youth justice specific children's rights standards, provide clear guidance on what is required to achieve rights compliance in youth justice. The incorporation of the UNCRC and the application of these principles in practice would provide a basis for achieving the ambitions of the Youth Justice Review.

2. Realising the ambitions of the Youth Justice Review

The commitment to undertake the Youth Justice Review arises from the Hillsborough Agreement, and as such is part of an international peace agreement. The Youth Justice Review made a series of recommendations, but these were only partially implemented, and some of the most significant recommendations including raising the Minimum Age of Criminal Responsibility have not been taken forward. Raising the MACR to an appropriate level, which the UNCRC has now stated should be 16, to ensure children's rights compliance, is a necessary reform on which many other fundamental changes within the system rest.

3. Developing an evidence base

There are clear gaps in data in the youth justice system. There is no clear evidence about the impacts of interventions or longer-term outcomes. As the Northern Ireland

Audit Office notes, the proposals to develop a Regional Care and Justice campus rest on several claims that lack sufficient underpinning evidence.

4. Mission Creep in Youth Justice

There is evidence of 'mission creep' in youth justice, particularly in the sphere of early intervention. A body of persuasive research evidence shows that the best outcomes for young people can be achieved when their needs and behaviours are responded to outside of the criminal justice system. It follows therefore that a range of non-criminal community- based preventative programmes should be developed, resourced and supported, to ensure young people do not come into the fringes of the criminal justice system. The Youth Justice Agency should act as signpost to community- based services and ensure their move towards early intervention work does not draw more young people into having contact with the justice system.

5. Transparency in policymaking

There has been a lack of transparency in policymaking in youth justice. Some of the key underpinning documentation and rationalities, which have informed significant policy proposals and developments (e.g., the Scoping Study), have not been subject to public scrutiny. There needs to be a commitment to ensuring transparency in policymaking that meaningfully consults with and incorporates the perspectives of children and young people and the wider sector involved in this area.

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