

## **Advice to the NICTS on the Consultation on Proposals for the Rationalisation of the Court Estate**

The office of the Northern Ireland Commissioner for Children and Young People (NICCY) was established under the Commissioner for Children and Young People (Northern Ireland) Order 2003. The Principal aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people. As such this advice is limited to the proposals contained within the consultation document which will impact upon children and young people. NICCY did not consider it appropriate to comment upon proposals for the closure of specific courts. Instead consideration is given to the proposals generally as they relate to children and young people.

NICCY appreciates that the NICTS and DOJ are facing significant budget cuts but these should be addressed in a manner which will ensure that the rights of children and young people as defendants, victims and witnesses are not adversely affected. In this regard, NICCY welcomes the NICTS' commitment to ensuring that court users, particularly children, vulnerable and intimidated witness and disabled people, have access to facilities and accommodation which meet their needs. NICCY is grateful for the opportunity to contribute views and concerns on this issue prior to any decision making.

NICCY notes that a pre-consultation screening exercise indicated that the proposals for the rationalisation of the court estate would have an impact on "a small number of Section 75 categories." NICCY is of the view that the current proposals would have an adverse and disproportionate effect on children and young people as users of Northern Ireland's courts. NICCY therefore hopes that the NICTS will complete and consult upon a full EQIA of the proposals.

In examining the proposals, NICCY have considered relevant domestic legislation, international legislation and the Lord Chief Justice's Guidelines. NICCY would refer the NICTS to Article 27(3) of the Criminal Justice (Children) (Northern Ireland) Order 1998, the Lord Chief Justice's 'The Youth Court in Northern Ireland Guidelines for Operation and Layout' and the Justice Bill which is currently before the Justice Committee for consideration. The Justice Bill includes a revised aim of the Youth Justice System providing for the amendment of Section 53 of the Justice (Northern Ireland) Act 2002 as follows:

*“...all such persons and bodies must also have the best interests of children as a primary consideration and have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.”*

In determining how to take forward proposals to rationalise the court estate, NICCY expects that the NICTS will give appropriate consideration to the above.

Moving on to the substantive proposals, as stated NICCY is concerned that these will have a detrimental and disproportionate impact upon children and young people as court users. NICCY notes with concern that the NICTS state in the consultation document that *“insofar as it is practicable to do so, youth court...business should have some level of separation from other adult criminal court business”*.<sup>1</sup> In NICCY’s view, this is not acceptable. Youth court business should be entirely separate from all adult court business. Youth courts should not sit on the same days as other courts, particularly adult criminal courts, so as to protect the best interests of children and young people as court users, in line with the revised aim of the youth justice system as detailed above.

Article 27(3) of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides that *“so far as is reasonably practicable...children who are to be brought before the youth Court will not be present in the precincts of the court at the same time as adult defendants.”* This position is affirmed in the Lord Chief Justice’s ‘The Youth Court in Northern Ireland Guidelines for Operation and Layout’ where it is stated *“as far as possible, sittings of the youth court should be arranged to make sure that children are not in or near the court at the same time as adult defendants.”*

NICCY is aware that court sittings are determined by the Lord Chief Justice and the judiciary, and note that the court calendars contained within the consultation document are indicative only. However, NICCY is extremely concerned that, in the majority of the proposed court mergers, the calendars clearly indicate insufficient capacity to have youth court sittings on days on which there are no adult courts sitting. This failure to separate the sittings will clearly result in children coming into contact with adult defendants, in contravention of the Criminal Justice (Children) (Northern Ireland) Order 1998 and the

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<sup>1</sup> Paragraph 1.26

Lord Chief Justice's Guidelines. NICCY do not consider that it is ever appropriate for children and young people attending court as defendants, witnesses or victims to come into contact with adult defendants. Any proposal which would enable this is at odds with the revised aim of the youth justice system. Such proposals may also impinge upon a child defendant's right to privacy as provided for under Articles 16 and 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (UNCRC), Article 8 of the European Convention on Human Rights (ECHR) and Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

NICCY's concerns about the proposals are heightened by the current facilities for Belfast Youth Court within Laganside Courthouse following the closure of the Old Townhall Building. NICCY appreciate that the NICTS have worked as best they can to accommodate Belfast Youth Court within the limitations of the Laganside building and their budgetary constraints. However, the facilities at present are not child rights compliant. NICCY notes the arrangements detailed at paragraph 6.7 of the consultation document, however, having visited the facilities and engaged with practitioners using same, we remain concerned that these arrangements are not working in practice. The separate waiting area for Court 1 has not materialised as those attending the adult courts on the same level frequently use this waiting area. Interview and consultation facilities are particularly poor. Consultation facilities are extremely limited with only 4 rooms available. In practice, these rooms are also used for interviews and consultations by users of the adult criminal courts on the same level due to the limited facilities available. Furthermore, we are aware that there have been issues with interview facilities for the Youth Justice Agency (YJA). Due to a sound proofing concern with the room provided on Level 2, the YJA were offered a room on Level 1 to engage with children and young people but this resulted in the prolonged absence of YJA staff from the court. YJA staff are now forced to consult with children and young people in the corridor, which is clearly not acceptable.

For the reasons outlined above, the physical separation of Court 1-3 from the county courts and adult magistrates court, is not working in practice. In addition to these concerns, children and young people attending the court complex as defendants, witnesses or victims have to use the same entrance as all adult defendants and other users of the court complex.

NICCY are aware that the NICTS wish to move the Belfast Youth Court to Level 1 which will alleviate a number of the concerns above, though issues regarding the building

entrance will remain. However, the NICTS cannot move forward with their plans until the decisions are made following the outcome of this consultation. NICCY have written separately to the Minister of Justice outlining concerns regarding the current provisions for children and young people using Belfast Youth Court and will continue to engage with him in this regard.

Should youth courts be moved into adult courtrooms, NICCY would question whether the physical layout of the courtroom would be appropriate for a youth court. In his Guidelines, the Lord Chief Justice states that in the youth court, *“the case should always be heard in a courtroom where everyone involved is on the same, or almost the same, level. Research has shown that the physical court environment – the type of furniture, layout and seating arrangements – can influence effective communication.”* The Lord Chief Justice suggests that youth court judges should be *“at or near the same level as the child, (meaning) that they can more easily maintain eye contact when speaking to them. This helps to involve the child.”* Therefore, in determining how to progress with the rationalisation of the court estate, NICCY urges the NICTS to consider the appropriateness of any new courtrooms which will house youth courts and the availability of funding for necessary alterations. Only through adherence to the Lord Chief Justice’s Guidelines will children be provided the opportunity to be heard in the proceedings which affect them directly, as enshrined in Article 12 of the UNCRC, and realise their rights under Article 6 of the ECHR.

Consideration must also be given to the entrances and exits to court buildings and courtrooms, particularly in relation to young victims and witness. Such children and young people should not have to be fearful of seeing the alleged perpetrator within the court complex, otherwise they may be reluctant to permit matters to proceed to court thereby denying them access to justice.

Adequate consultation and interview facilities must also be available for use of children and young people with their legal representatives and also the YJA. Appropriate and separate waiting areas must also be available. NICCY would be concerned that increased court business on days when both adult and youth courts would sit under the new proposals, will result in insufficient consultation, interview and waiting facilities. In this case, if the proposals are to proceed, sufficient budget must be provided for the development of additional facilities to accommodate all court users on the day. Furthermore, this increased business for legal practitioners representing child and adult defendants on the same day, may potentially impact upon the individual attention

practitioners are able to provide to the child defendant.

In considering the travel implications of the proposals, NICCY notes the NICTS' reference to the 2011 court user survey. NICCY is interested to know what proportion of the respondents were children and young people. If NICTS hold this data, we hope that appropriate consideration will be given to the number of children and young people who rely upon public transport to attend court. If this data is not available, NICCY would question the NICTS' reliance upon the survey insofar as it relates to the youth court.

In conclusion, NICCY is grateful for the opportunity to comment upon the NICTS' proposals for the rationalisation of the court estate. I appreciate that NICTS are facing significant budget reductions, and in respect of Belfast Youth Court, would wish to operate as best they can under current physical and financial constraints. However, I remain very concerned about the impact the proposals will have upon children and young people as court users for the reasons outlined above. NICCY considers that a more thorough examination of the impact of the proposals on children and young people is required.