

Advice to Department of Justice in relation to their Consultation on Time Limits in the Youth Court

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.

NICCY welcomes the opportunity to respond to the Department's proposals to introduce statutory time limits in the Youth Court and thanks the Department for their extensive consultation with stakeholders on this issue. NICCY has found the stakeholder workshops beneficial in understanding the rationale behind the Department's proposals and is grateful to the Department for holding same.

General Comments

NICCY has consistently raised concerns about delay in the youth justice system in Northern Ireland. The issue has also been addressed in several independent reports, namely a Review of the Youth Justice System in Northern Ireland¹, a Review of the Northern Ireland Prison Service,² CJINI reports on Avoidable Delay³ and Avoidable Delay – A Progress Report.⁴

The youth justice system in Northern Ireland should be guided by relevant human rights instruments. With respect to the issue of delay, these include the European Convention on Human Rights (ECHR)⁵ as incorporated into domestic legislation through the Human Rights Act 1998, the United Nations Convention on the Rights of the Child (UNCRC)⁶, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules')⁷, the UN Rules for the Protection of Juveniles Deprived of their Liberty (the

¹ 2011

² 2011

³ 2006 and 2010

⁴ 2012

⁵ Article 6

⁶ Articles 3, 6, 9, 12, 25, 37 and 40

⁷ Rule 20

‘Havana Rules’⁸ and the UN Committee on the Rights of the Child General Comment Number 10⁹.

Article 3 UNCRC provides that in all actions concerning children and young people, the best interests of the child is a primary consideration. This principle is to underpin the youth justice system¹⁰ and so it is vital that this is reflected in all relevant policies.

Article 40(2)(b)(iii) UNCRC affords a child in contact with the youth justice system the right “*to have the matter determined without delay...*” This position is supported by the Havana Rules.¹¹ Rule 20 of the Beijing Rules states that “*each case shall from the outset be handled expeditiously, without any unnecessary delay.*”

In addressing concerns regarding delay in youth justice, the UN Committee on the Rights of the Child recommended that State Parties implement a 3 tiered time limit “*...for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body.*”¹² The Committee further stated that the time limits in the youth justice system should be much shorter than those set for adults.¹³

It is these principles outlined above which must underpin efforts to address the issue of delay in the youth justice system in Northern Ireland.

Charge and Summons Cases

The statistical information provided in the consultation paper outlines the significant differences in the average processing times for charge and summons cases. It is clear that processing times in respect of both must be improved and NICCY welcomes the Department’s efforts to do so.

⁸ Rule 27

⁹ 2007

¹⁰ S53 Justice (Northern Ireland) Act 2002

¹¹ Rule 17

¹² Concluding Observations of the Committee in the Rights of the Child: United Kingdom of Great Britain and Northern Ireland (2008)

¹³ *Ibid*

Currently, the average processing times for charge cases¹⁴ falls within the proposed statutory time limit of 120 days. Although the starting point is later than what was hoped. (Please see below.)

However, in 2012/13 just under two-thirds¹⁵ of all prosecutions against young people were summons cases. The average processing time in summons cases was more than twice that of charge cases¹⁶. Therefore, the prosecutorial method most commonly used for young people is that which is most in need of significant overhaul to address delays in the youth justice system.

In charge cases, PSNI have a 28 day deadline in which to prepare case files. Unfortunately there does not appear to be any corresponding deadline in respect of summons cases. This could be one of the reasons for the discrepancies in the average processing times of charge and summons cases and therefore something which should be further explored when tackling the issue of delay.

Starting Point

As stated above, NICCY is grateful to the Department for holding workshops in respect of statutory time limits, as this afforded an opportunity for the Department to explain the rationale behind the proposed starting points. However, NICCY remains disappointed with the proposals in this respect and feels that areas of the youth justice system in which there are significant delays are omitted from the statutory time limits, thereby restricting the time limits from achieving the desired aim.

Unfortunately, no statistical information has been provided in respect of the pre-charge and pre-report (in summons cases) time periods. NICCY understands that these periods can be lengthy, particularly in summons cases.

Reflecting on the data at paragraph 2.26 of the consultation document, NICCY notes that in cases where the summons is served on the first attempt, there are on average 71 days from when the accused is informed until a PPS decision is issued. To this period must be

¹⁴ 109 days in 2012/13

¹⁵ 1,221

¹⁶ 109 days for charge cases compared to 247 for summons cases

added the pre-reporting period (for which statistical information is unavailable). Together, this accounts for a significant period of the youth justice process in summons cases. NICCY is concerned that this period will be excluded from the proposed statutory time limit and so substantial delays here will not be addressed.

NICCY understands the Department faces difficulty in identifying a starting point in summons cases. However, NICCY believes the Department should seek to create an earlier starting point in summons cases so delays as highlighted above can be effectively addressed.

In respect of charge cases, NICCY is also disappointed with the proposed starting point – namely the point of charge. In such cases, there is an easily identifiable event which can be used as the starting point – the point of arrest. Indeed legislative provision already exists for the use of this starting point.¹⁷ This is also the starting point recommended by the Youth Justice Review Team and the Prisons Review Team. NICCY understands the Department’s reservations in respect of this suggested starting point, however these could be overcome through measures such as closely scrutinised applications for extensions in exceptional cases. For statutory time limits to be truly effective, an earlier starting point must be utilised.

NICCY believes that a statutory time limit commencing at the point of arrest / detection, as recommended by the Youth Justice Review Team, and supported by the Prisons Review Team, would be the most effective way in which to tackle the issue of delay. By ignoring the pre-charge and pre-report periods, areas where significant delays exist are exempt from statutory time limits and so are overlooked. NICCY considers that failing to establish an earlier starting point is a missed opportunity in this attempt to address delay in the youth justice system.

End Point

In respect of the proposed end point, NICCY is disappointed with the further deviation from the recommendations of the Youth Justice Review. NICCY would not advocate the imposition of a time limit covering the trial period itself, however delays can and do exist during the period following conviction. If this period is also omitted from the statutory time

¹⁷ Criminal Justice (Northern Ireland) Order 2003, Article 15

limit, the desired impact of same will be significantly limited.

The Criminal Justice (Northern Ireland) Order 2003

NICCY concurs with the Youth Justice Review, in that the Criminal Justice (Northern Ireland) Order 2003 is an insufficient means through which to impose statutory time limits. The 2003 Order does not provide for an end-to-end statutory time limit, which NICCY feels would be a significant stride in tackling this issue.

Further, while the 2003 Order does provide for an earlier start point for under 18s (namely the point of arrest), no corresponding starting point is set out for under 18s who are not arrested.

As such NICCY feels the 2003 Order is inadequate and legislation would have to be amended or redrafted to enable a statutory time limit to fully address the issue of delay in the youth justice system.

Duration

The proposed duration of the statutory time limit is 120 days, the same figure proposed by the Youth Justice Review. However, the Youth Justice Review recommended an earlier starting point and later end point than those proposed by the Department. It is therefore concerning that the Department seeks to initiate statutory time limits for the same duration but covering a much shorter period of the youth justice process.

The reasoning behind the figure of 120 days is set out at paragraph 4.37 of the consultation paper. It is stated that in 80% of summons cases, it takes approximately 124 days from the date of complaint through to disposal. The proposed statutory time limit will finish at an even earlier point. NICCY does not consider that a reduction of 4 days is sufficiently challenging, nor that this will have a significant impact in addressing concerns regarding delay in the youth justice system, repeatedly raised by NICCY and other organisations. As already stated, summons cases represent the majority of prosecutions of young people and it is in summons cases where the most alarming delays arise.

In respect of charge cases, paragraph 4.39 of the consultation paper states that the period covered by the proposed statutory time limits currently requires an average of 108 days. Again, a proposed duration of 120 days does not appear to reflect a particular challenge.

NICCY would have hoped more effort would be made to address delay by creating an earlier start point than that proposed, a later end point than that proposed or a shorter duration than that proposed where the start and end points are to differ from those recommended.

Other Considerations

While it is appreciated that the frequency of youth court sittings is a matter outside the Department's remit, NICCY feels that this could have a significant impact on the practical working of statutory time limits and so wishes to flag the issue at this stage. Typically youth courts do not sit as frequently as adult courts. For example, Banbridge Youth Court sits once per month while Coleraine Youth Court sits twice per month. Should adjournments be required, the infrequency of youth court sittings could impact upon the adherence to the statutory time limit.

Another reason often cited for delay is the preparation of forensic, medical and pre-sentence reports. While delays in this respect may be addressed through other initiatives, NICCY consider that these issues cannot be isolated from the consideration of statutory time limits.

The Youth Justice Review provided an alternative option whereby after being questioned by police, a child would return to the Police Station one week later to be charged, summonsed, cautioned / warned, diverted to a youth conference or told that no further action would be taken¹⁸. NICCY had hoped see a further exploration of this suggestion and would welcome same.

In conclusion, NICCY thanks the Department for the extensive stakeholder consultation on the issue of delay in the youth justice system. NICCY appreciates the Department's efforts

¹⁸ Review of the Youth Justice System in Northern Ireland, 2011, Page 72

to address this complex issue, however NICCY considers that further work must be done to meaningfully tackle unacceptable delays in the youth justice system for the reasons set out above.