

Speeding Up Justice Branch
Access to Justice Directorate
Department of Justice
G57
Massey House
Stormont
Belfast

10 June 2013

Dear Sir/Madam

Re Youth Engagement Pilot

I write in response to the above.

As you will be aware, my office was established by the Commissioner for Children and Young People (NI) Order 2003 with the primary aim of safeguarding and promoting the rights and best interests of children and young people. Under articles 7(2) and (3) of this legislation, I have a statutory duty to keep under review the adequacy and effectiveness of law, practice and services relating to children and young people.

I would like to broadly welcome the Youth Engagement Clinic scheme and the desire to divert children and young people away from the youth justice system at the earliest opportunity and toward appropriate support and/or intervention measures. I also welcome the opportunity to contribute towards the evaluation of the Youth Engagement Pilot. However, I do wish to point out that I would have been better equipped to contribute to the evaluation if I were in possession of up-to-date statistics in respect of the Youth Engagement Clinics. Unfortunately, the latest statistics available were those provided during the mid-stage review on 31st January 2013, prior to the geographical extension of the pilot. I would require further and more up-to-date information in order to respond fully to the evaluation of the scheme. For example, how many cases have now been referred? What has been the outcome of these? Are the set timescales being met? How many clinics have been attended by legal representatives? Have the previously identified issues regarding the sharing of information with Health Trusts been resolved? How have contested matters proceeded and how quickly have they been progressed through the



Youth Court? What has been the view of the young people who have participated in the pilot?

I have a number of concerns which have come to my attention during the course of the pilot.

My primary concerns are as follows:

1. Number of referrals

I am concerned by the very low number of referrals which had been made as of 31st January 2013. At that stage 10 referrals had been made, 7 of which had been dealt with. I would therefore query whether adequate training and advice has been provided to PSNI officers and those deciding upon a young person's suitability for the Youth Engagement Clinics? Has a consistent approach been adopted by PSNI officers? Are all suitable cases being correctly identified?

2. Availability of legal advice and representation

I am extremely concerned about the lack of legal advice and representation provided to young people at the clinics. Of the 7 cases that had been to the clinic at the end of January 2013, only one young person had legal representation. I understand this young person had not made an admission at the Police Station interview and therefore legal representation at the clinic was compulsory. The remaining 6 young people did not have the benefit of legal advice and representation at the clinics.

I am aware that an 'appropriate adult' is always in attendance with the young person at the clinic, however, this is not a substitute for legal advice and representation. In order to make an informed decision and to appreciate the consequences of making an admission and accepting a diversion, the young person should have legal representation. A young person cannot make an informed decision unless they have had the opportunity to discuss the matter fully with a Solicitor and obtain appropriate legal advice. Furthermore, legal advice provided prior to the clinic may not be sufficient as there may be developments during the course of the clinic, and as such legal representation is essential.

It is a concern that the legal community is not fully aware of the existence of the clinics, their role at same and the fact that legal aid is available for their attendance. I would query the level of engagement with Solicitors and the Law Society.

I would also be concerned that Solicitors may be resistant to attending the clinics due to the level of payment available. I understand that attendance is paid by the Legal Services Commission (LSC) at the 'PACE Green Form' rate, a rate which the profession has previously indicated they feel is too low and one which was the subject of a dispute between Solicitors and the LSC. I would therefore be concerned that Solicitors may be unwilling to carry out further work at this rate, a possible reason for the low level of legal representation during the pilot.

Further liaison with the LSC and Law Society is essential in order to ensure that young people will not suffer a detriment because of a lack of legal advice and representation at the clinics due to a lack of awareness of the clinics and/or discontent about the rate of payment available. Such liaison will be necessary to ensure the young people's right to a fair trial under Article 6 ECHR and Article 40 UNCRC is protected.

3. Looked After Children (LAC)

It is widely acknowledged that a disproportionate number of LAC enter the criminal justice system. (DOJ 2011) It is therefore imperative that there has been, or will be, engagement with Health and Social Care Trusts regarding LAC? LAC can move frequently between foster placements, care homes and secure accommodation. Who therefore will be responsible for ensuring that these children attend the clinics and do not suffer a detriment compared to other children who have parents/carers to remind them of the clinics and ensure their attendance? On this point, it is concerning that if the first appointment at the Clinic is missed, only one further appointment will be offered.

4. Young people, their parents or carers who suffer from learning or mental health difficulties

It is widely recognized that a significant proportion of children and young people coming into contact with the criminal justice system experience mental health problems or having learning difficulties. (Office of the Children's Commissioner England 2011, CJINI 2011, DOJ 2011).

What consideration has been given to young people, their parents or carers who may suffer from learning or mental health difficulties? How will their understanding of the process and the information letter be ensured? What training is given to PSNI officers to help them work with young people with mental health issues or learning difficulties? Again, it is concerning that only 2 appointments in total will be offered. Young people suffering from mental health or learning difficulties may miss the 2 appointments and

consequently will not be offered a further opportunity to attend the clinic and benefit from the diversion away from court proceedings.

5. Information letter

I have not had sight of the information letter through which young people are informed of the clinics. We were advised prior to the commencement of the pilot that young people would be consulted about this letter to ensure that its contents were child friendly and easily understood. If this consultation has not already taken place, then I would strongly encourage this as a matter of urgency so as to ensure the letter can easily be understood by those who receive it.

6. Feedback from service users

I understand that young people who progressed through the clinics were asked to complete an evaluation of the process. I have no information regarding these evaluations, including what questions were posed or how the evaluations were conducted. I would hope that all responses from the service users are taken into account during the evaluation process.

7. EQIA

Throughout the pilot very little information in relation to the Section 75 categories has been provided. I feel that it is imperative that a full EQIA is conducted given the significant impact this scheme will have on a number of Section 75 groups, in particular age, disability and gender. Given the wide range in age of the young people involved in the scheme (10 – 17), their levels of maturity and understanding will vary considerably. As the Section 75 category of disability includes learning disability, careful consideration should be given to the impact of the scheme on young people who are identified within this category. It is important to note that a significant proportion of young people in contact with the criminal justice system have been identified as having special educational needs. Furthermore, young people with mental health difficulties are known to be overly represented in this group. Finally, given the vast majority of young people who will potentially be involved in the scheme are young males, a proper assessment of the impact upon them should be made. I therefore feel it is essential that an EQIA and full consultation are held in relation to Youth Engagement Clinics.

8. Support / Intervention Services

There should be engagement with every organisation involved in the scheme and those providing support/intervention services to obtain their feedback of the process to date and ensure their readiness for any expansion of the scheme.

9. Future monitoring

I would welcome information as to how the scheme will be monitored and reported upon in the future.

I look forward to hearing from you further on the points raised above and the evaluation of the Youth Engagement Pilot.

Yours faithfully

A handwritten signature in black ink, reading "Patricia Lewsley-Mooney". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Patricia Lewsley-Mooney
Commissioner