NICCY
northern ireland commissioner
for children and young people

patricia lewsley-mooney
commissioner

Access to Justice Directorate
Department of Justice
G57
Massey House
Stormont

14 September 2012

Dear Sir/Madam

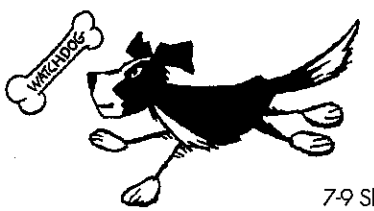
Re: Speeding Up Justice

As you will be aware, our office was set up under the Commissioner for Children (NI) Order 2003 with the principal aim of promoting and safeguarding the rights and best interests of children and young people in Northern Ireland. It is in that context that I am responding to your Blueprint for Improving Processes for Youth Cases. It is incumbent upon me to point to the very short space of time permitted for responses to this document and to state that I believe same to be unacceptable and contrary to best practice for consultations. I also note that I have not been made aware of any consultation with young people, who are the service users of the Youth Courts. Can you please confirm whether any consultation with young people has taken place regarding these proposals and if so what form this took?

With regard to the blueprint document I consider that a great deal more clarity would be required before stakeholders could respond properly to the proposals contained therein. In this regard I would particularly refer to the following:

Paragraph 2.3 – it is stated that almost 50% of cases which were withdrawn from the Youth Court in 2011 were withdrawn for a diversionary disposal to be administered. However no detail is given around the reasons for withdrawing the other 50%, some of which may point to other areas of delay or gaps in service which may need to be the focus of attention.

Paragraph 3.2 speaks of support for young people accused of a crime to make better informed decisions. However this would need to involve legal advice and no mention is made of a legal practitioner having input at this stage.



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Paragraph 3.2 also states an aim as improving process times for youth cases which are unsuitable for diversionary action. No detail is given of the role of the PPS in this and the need for changes to their policies to bring this about. Nor is regard had to matters outside of the control of the Court and the Criminal Justice Organisations such as obtaining medical reports. Whilst we would support a trial within a reasonable time in line with the ECHR and the UNCRC, we would also believe there is a need to be cognisant of the right to a fair trial which would necessitate full information being available and sufficient time being allowed for such information to be obtained by the Prosecution and Defence alike.

We would also be interested to know where the Probation Board (NI) fits into this blueprint as we are aware that in matters where a young person is convicted there can be delay occasioned in obtaining pre-sentence reports from PBNI.

Paragraph 3.4 refers to rapid decision making by the PPS and them prioritising Youth Engagement Cases. This would necessitate changes to the PPS policies and procedures around these cases but no detail in regard of this is included in the blueprint. We would also be interested to know how this will be monitored and reported on. In addition we are concerned that by prioritising Youth Engagement Cases young people who do not choose this option, or whose cases are deemed unsuitable, will be disadvantaged, for example young people who are submitting a plea of innocence could potentially have to wait longer for their matters to be progressed if priority and resources were being dedicated to Youth Engagement matters. Similarly will Youth Engagement Cases be prioritised over court directed diversion and if so, has consideration been given to the disadvantage this could cause to the young people in those cases?

Given that it would appear that the ethos of this proposal is to refer matters to diversion in a more timely matter, can you confirm what consideration has been given to the capacity of the YJA to meet this demand?

With regard to the new Youth Engagement Clinic which will be introduced we also have some concerns and would require a lot more information and clarity around same to respond fully. In particular we have concerns around how young people will be notified of their appointment at the Engagement Clinic as it would appear that the current PPS procedure of notifying them by letter does not take into account the particular circumstances of young people with literacy needs or mental health difficulties or indeed Looked After Children.

We also have concerns around the operating times and information given on young people being accompanied by their legal representatives to Engagement Clinics. No consideration appears to have been given to whether or not solicitors will attend such appointments out of office hours when no mechanism for payment other than potentially a/the green form would be available at that pre court stage. Can you please confirm what liaison you have had with the legal profession in this regard in advance of this being included in the blueprint?

In addition we are concerned that even if a genuine reason exists only one further appointment would be offered.

With regard to the proposed fast tracking of cases into court we would require more detail around how the young person could be given a court date at the clinic. Can you please confirm whether it is proposed under the terms of this blueprint that there would be a protocol between the Courts and Tribunals Service and the Engagement Clinic regarding the listing of Court dates?

We believe that one of the causes of delay in youth courts is in fact the frequency with which some courts sit. In Belfast the youth court sits 3 days a week, however we are aware that no other youth court sits this frequently and indeed 5 youth courts only sit once per month. Can you confirm what consideration has been given to the impact this has on delay in cases which make it to the Court arena?

It is also our belief that the s75 EQIA is flawed in a number of areas and overly minimises the impact this proposal has on a number of section 75 groups, namely age, disability and gender. This proposal will have significant impact on the young people concerned therefore the proposals have a particular effect on the age category. As the children and young people potentially affected will range in age from 10 to 18 years, their levels of maturity and understanding will vary considerably. Therefore it will be important to assess whether all children and young people will be able to access the provision equally a significant proportion of young people in contact with the criminal justice system have been identified has having special education needs. As the section 75 category of disability includes learning disability, careful consideration should be given to the impact of the proposal on young people who are identified within this category. It is also important to note that young people with mental health difficulties are known to be overly represented in this group. Given that the vast majority of young people who will potentially be affected by this blueprint are young males, we believe the impact upon them has also not been correctly assessed.

We would therefore propose that a full consultation with sufficient detail and time to prepare a full response to the document be conducted.

Yours faithfully

Patricia Lewsley-Mooney

Patricia Lewsley
Commissioner