Steven McCourt

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Ref: 22/CJS/KY/91

4 August 2022

Dear Steven

**Bail, Remand and Custodial Arrangements for Children**

As you will be aware the Commissioner for Children and Young People (NICCY) was established in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, I have a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

NICCY welcomes the opportunity to advise the DoJ regarding the custodial arrangements for children having previously advised on Bail and Remand proposals. It must be noted that currently custody for children in NI, is not a measure of last resort. In 2020-21, 3% young people in the JJC were sentenced, with the remaining 98% either there on PACE or remand.[[1]](#footnote-1) The statistics also show that 49% of those who were on PACE were remanded or sentenced to custody. Therefore, I welcome the face that the proposed bill will address bail, remand and custody arrangements and that one of the primary aims is to ensure that the deprivation of a liberty is used as a very last resort.

It is my intention to briefly respond to the questions asked.

**Q1. Minimum duration of 6 months**

NICCY agrees that there is no reason to change the minimum duration but that there must be clear monitoring of adherence to Article 45 of the Criminal Justice (Children) (NI) Order, 1998.

**Q2. Maximum duration dependent on age**

I am unclear as to the reason for proposal. The UNCRC and the law in NI does not differentiate between different age categories of children within the criminal justice system. NICCY therefore does not support the extension of maximum duration for older young people as proposed. We recognise that dangerous driving may be an exception and recommend that changes are made in the relevant legislation as with other violent offences.

**Q3. Custody/Community split**

NICCY agrees with this proposal

**Q4. Age applicability and Q8 Repeal of uncommenced Custody Care Order provisions**

NICCY believes that these two questions must be viewed in tandem. We fully support the removal of custody as a provision for children between the ages of 10 and 13 and assume that the bail and remand proposals will reflect this also.

NICCY supports the repeal of custody care orders but, pending the raising of MACR, seeks further information with regards to provisions for the unlikely and rare eventuality that a child aged 10-13 is charged with a serious sexual or violent offence.

On the issue of the young person being over the age of 17 when finally sentenced NICCY believes that it would be appropriate for the sentenced to be served in the YOC.

**Q5. Transition/Transfer to YOC**

NICCY commends the YJA and YOC for the practice of keeping young people in the JJC up to 6 months past their 18 birthday if deemed in their best interests and would support the continuation of this practice.

**Q6. Supervision in the community**

Again, NICCY agrees that the YJA should supervise the community element of the new order and that it should not have the same principles as the current JJCO. Further consideration should be given as to which agency supervises the community element when a young person is over 18. We would recommend that the default position should be that PBNI undertake this role when the young person is over 18 on release from the JJC. As a social work agency PBNI can support the young person to transition to and navigate adult services. There should, however, be provision for circumstances where it would be in the best interests of the young person that the supervision is undertaken by the YJA.

**Q7. Breach procedures**

Breach and a return to custody has serious implications and it is expected that such action will only be taken as a last resort. The YJA must take all relevant measures to support the child to comply with the conditions of the order and avoid further custody. NICCY strongly cautions the department from attempts to merge or find a compromise between the JJCO and the YOC Order in the development of the new order. The new order should be entirely driven by considerations that are in the best interests of the children, therefore, NICCY does not agree that a child should be returned for up to the remaining period of the order and believe that comparisons with adult orders such as those outlined in CJO, 2008 are inappropriate. It is also not appropriate to breach children “as a deterrent” to others and is not in keeping with the non-punitive approach espoused on the document. NICCY accepts that there should be consequences to breaches and that a return to custody for a *maximum* of 30 days is more appropriate. We agree that compulsory number of days should be avoided.

**Q9. Suspended Sentences**

NICCY agrees that suspended sentences are not appropriate for these orders.

**Q10. Other custodial sentences**

NICCY supports a change is the legislation that removes discretion for the Minister to “decide” on a location. All children sentenced to custody should be in a place designated as the JJC.

**Conclusion**

As stated NICCY welcomes the intention to progress the development of legislation to revise bail, remand and custody arrangements for children in NI. We also welcome the DoJ’s intention to propose legislation that finally removes the possibility of any child being held in the YOC.

NICCY looks forward to continuing to engage with the DoJ and the NI Assembly as the legislation progresses.

Should you require further clarification, please do not hesitate to contact my office.

Yours sincerely



Koulla Yiasouma

**Commissioner**

1. <https://www.justice-ni.gov.uk/publications/r-s-bulletin-northern-ireland-youth-justice-agency-annual-workload-statistics-202021> [↑](#footnote-ref-1)