

CAJ's submission no. S375

CAJ's submission to the consultation on the Report of the Youth Justice Review

January 2012

What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Submission to the consultation on the Report of the Youth Justice Review Northern Ireland, January 2012

Committee on the Administration of Justice ('CAJ')

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The Youth Justice Review ('the Review') was established by the Minister for Justice, David Ford MLA, in November 2010. This was in furtherance to the commitment made within the Hillsborough Castle Agreement of February 2010 that there would be a:

Review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice¹

The Terms of Reference for the Review asked for particular regard to be given to international obligations in this area and to the protection the rights of all involved. As part of the Review process, a formal call for written submissions was issued in December 2010. CAJ made a written submission to the Review in March 2011 in which we commented on a number of issues we believed the Review team should explore. The Review report was published in September 2011 and opened for public consultation.

Summary:

The Review report considers various issues in relation to the youth justice system and makes a number of recommendations, some of which are set out below:

- The Review considers the need for various government departments to cooperate in relation to the youth justice system;
- The Terms of Reference for the Review required it to have regard to international obligations, some of which are referred to in the Review report and in a separate analysis document;

¹ Agreement at Hillsborough Castle, 5th February, 2010 Section 1.7
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- The Review report recommends that the best interests of the child should be given primary consideration within the youth justice system;
- The Review considers the right of the child to express his or her views freely and to be heard in the context of proceedings before the Youth Court and in the setting of bail conditions;
- The Review makes a number of recommendations relating to the remand of children in custody, the use of the Juvenile Justice Centre (JJC) as a ‘place of safety’ and recommends the discontinuation of the detention of children in the same facility as young adults at the Young Offender’s Centre (YOC);
- The Review report recommends that the minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14;
- The Review considers how to prevent children coming into contact with the youth justice system and how to engage in early intervention with them;
- The Review report considers diversionary measures used in relation to children and the use of youth conferencing;
- The Review report recommends that higher priority be afforded to the rehabilitation and re-integration of young offenders in custody;

Whilst CAJ welcomes many of the Review report’s findings and recommendations, we also provide comment on them, particularly in relation to where we consider that the Review has given insufficient attention to important issues, or could have made stronger recommendations. Some such issues are:

- In relation to cooperation, early intervention and prevention CAJ believe the Review report should have reminded government of it’s international human rights obligation to have the best interests of the child as a primary consideration in making budgetary decisions and that this principle should have been reflected in the Review report’s recommendations;
- CAJ does not consider that the Review report has examined whether the right of the child to express his or her views and to be heard is fully protected at every stage of the criminal justice system;
- In relation to the transfer of children detained with young adults in the YOC to the JJC, CAJ believe that the timetable recommended for arrangements to be put in place to manage this transition of a maximum of 18 months seems unnecessarily long;
- The Review report does not consider the use of Anti-Social Behaviour Orders in Northern Ireland, which CAJ considers to be a major oversight;
- The Review does not appear to have fully considered the possibility of further engagement with persistent offenders, who have been subject to numerous youth conferences, in order to determine more effective mechanisms to support desistance from offending;

- Whilst CAJ welcomes the recommendation that higher priority be afforded to the rehabilitation and re-integration of young offenders in custody, we believe that the Review report could have set out mechanisms to achieve this;

CAJ also expresses concern at how the consultation process and the equality obligations that relate to it has been conducted by the Department of Justice (DoJ) in relation the Review report.

Cooperation and the need for joined up government:

In our initial submission to the Review, CAJ stated that:

...the youth justice system should not only involve the Department of Justice but needs clear and systematic cooperation and synchronization with various other relevant government departments²

We emphasized that for long-lasting significant changes to be made to the youth justice system, there was a need for 'buy in' from various government departments, including health and education. We urged the Review team to take a holistic view of the youth justice system in light of this.

It is encouraging that the Review report has considered the need for various government departments to cooperate in relation to the youth justice system. The report recommends that the First and deputy First Ministers should reconfirm the government's commitment to children and young people through the establishment of a Ministerial Committee comprising the Ministers of Education, Health and Social Services, Social Development and Justice as its core members (p. 96).

The Review believes that such a Committee would be consistent with the requirement under the United Nations Convention on the Rights of the Child (UNCRC) to promote a unifying, comprehensive and rights-based national strategy (p. 92). Reference to the Government's human rights obligations in this context is welcome.

In our initial submission to the Review, CAJ suggested that given the current financial climate there is particular benefit in cross-departmental coordination at present. The Review report also recognizes this, stating that to ensure that whatever resources are available are spent to the best effect and on the young people and their families who really need it, there needs to be a clear and strategic plan of action across all the relevant departments (p. 92). The Review report suggests that the appropriate mechanism to achieve this is through the Programme for Government. CAJ note that the draft Programme for Government 2011 – 2015 has been published and has been open for public consultation since November 2011. As part of the commitment to reducing the level of serious crime, the DoJ has committed to implementing

² CAJ submission no. S300 'CAJ's response to the Youth Justice Review Team' March, 2011, p. 3

90% of the agreed Youth Justice Review recommendations by 2013/2014.³ However, there does not appear to be any further reference to the Youth Justice Review recommendations within the draft programme in relation to other government departments and hence it is not presently fully reflective of the Review's recommendation. CAJ would urge that the clear actions across all relevant departments envisaged by the Review report be included in the final Programme for Government and in subsequent departmental action plans flowing from that.

CAJ also believes that the main Review report should have reminded the Government of its international human rights obligations derived from the UNCRC in relation to budgetary decisions. The Committee on the Rights of the Child has outlined that state parties' obligations under the UNCRC include to:

...ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturn⁴

From the Committee's comments, it is clear that the obligation to make budgetary decisions with the best interests of the child as a primary consideration applies always, and that children must be protected during a period of financial uncertainty. Whilst we note that the Committee's comments are referred to in the separate analysis of children's rights and international standards prepared as part of the Review (p. 66), CAJ believe this point should also have been made in the main Review report and explicitly reflected in its recommendations.

The Review report also recommends that the Criminal Justice Delivery Group (CJDG) should develop a strategic interest in youth justice and, together with the Criminal Justice Board and the Ministerial Children's Committee, take overall responsibility for implementing the Review's recommendations (p. 96). The focus displayed by the Review report on how its recommendations should be implemented is welcome. The Review highlights how the Youth Justice System has been given low priority by the CJDG up to now, with most attention being devoted to adults within the criminal justice system. CAJ agrees that the Youth Justice System must be afforded a higher priority, given the greater potential to affect positive change on young people, thus preventing them from being further drawn into criminality as they become adults.

³ Draft Programme for Government 2011 – 2015, November 2011, p. 42

⁴ UN Committee on the Rights of the Child (2003) General Comment No 5 General Measures of Implementation of the Convention on the Rights of the Child, para. 51.

Human Rights obligations and standards:

As outlined above, the Terms of Reference for the Review required it to have regard to international obligations. In our initial submission to the Review CAJ outlined a number of international human rights obligations and best practice standards that we considered to be most relevant in relation to the youth justice system. The Review report states that:

In reviewing the system against international standards, we have given particular weight to the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC), where they are significant in relation to particular issues.⁵

CAJ welcomes the repeated reference to these standards throughout the Review report, given the status of the UNCRC as a binding international treaty in relation to children's rights, and given that the rights contained within the ECHR are enforceable under domestic law.

However we do note that there is limited explicit attention to other relevant international 'soft law' standards in the body of the Review report. Courts and treaty bodies interpreting ECHR and CRC rights will often do so on the basis of such standards which provide a more detailed and comprehensive framework for many of the themes covered by the review.⁶ Whilst it is welcome that an extensive analysis of children's rights and international standards is available as a separate document from the main Review report, the absence of explicit reference to such standards in the main Review report makes it difficult for us to ascertain the extent to which such standards have been harnessed to benchmark the current youth justice system and inform the Review's recommendations. Explicit reference in the main Review report to such standards would have afforded greater clarity as to whether the objective outlined in the Hillsborough Castle Agreement of ensuring compliance with international standards and best practice has been achieved.

In our initial submission CAJ also referred to a number of fundamental principles outlined in the Guidance Note of the Secretary General of the United Nations 'Approach to Justice for Children', which we urged the Review Team to incorporate into the Review. Whilst some of these principles have been discussed in the Review report, with various recommendations made, CAJ is disappointed that insufficient attention has been given to others. One

⁵ 'A Review of the Youth Justice System in Northern Ireland' September 2011, p. 19

⁶ The Review report does refer to some of international and regional human rights standards CAJ referred to in its initial submission, such as Committee of Ministers of the Council of Europe 'Guidelines on child-friendly justice' and 'Recommendation for juvenile offenders subject to sanctions or measures' but does not make explicit reference to various important United Nations standards in the main Review report, such as the 'Standard Minimum Rules for the Administration of Juvenile Justice' ('the Beijing Rules'), the 'Guidelines for the Prevention of Juvenile Delinquency' ('the Riyadh Guidelines') or the 'Rules for the Protection of Juveniles Deprived of their Liberty' ('the Havana Rules') or the Guidance Note of the Secretary General of the United Nations 'Approach to Justice for Children'. These are referred to in the separate analysis however.

such principle that CAJ believe was given insufficient attention relates to guaranteeing fair and equal treatment of every child, free from all kinds of discrimination. The Review report refers to Article 2 of the UNCRC, which obliges states to prevent discrimination against children (p. 88). It also identifies various groups such as children with special educational needs and traveller children in relation to this obligation (p. 89). However the report does not actually reach any conclusion as to whether fair and equal treatment is being guaranteed for these children. CAJ note the Review team's statement that due to the complexity of their task, they consciously focused on those issues that they felt, if resolved, would make the greatest difference to the lives of children, victims and communities (p. 7). However, we believe that it would have been useful if the Review team had identified those issues that they believed they did not have sufficient time or resources to focus on, so that further action could be undertaken.

The best interests of the child:

In our initial submission, CAJ urged the Review to incorporate the principle that the best interests of the child be given primary consideration within the youth justice system. The Review report outlines that currently the stated principal aim of the youth justice system in Northern Ireland is to protect the public by preventing offending by children. Present legislation provides that all persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view in particular to encouraging children to recognise the effects of crime and to take responsibility for their actions. However, all such persons and bodies must also 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.⁷ The Review report also notes that the current Public Prosecution Service (PPS) Code for Prosecutors does not consider the best interests of the child in the test for prosecution (p. 47).

The Review makes two recommendations in relation to this. Firstly, it recommends that the aims of the youth justice system outlined above should be amended to fully reflect the best interest principles as set out in Article 3 of the UNCRC.⁸ The Review also recommends that to comply with this new principal aim of the youth justice system the PPS should incorporate Article 3 of the UN Convention on the Rights of the Child into their Code of Practice (p. 51). CAJ welcomes these recommendations, as they would further compliance by the government with its obligations under the UNCRC.

⁷ Justice (Northern Ireland) Act 2002, s. 53

⁸ Article 3 of the UNCRC provides that the best interests of the child should be the primary consideration.

Advancing the rights of the child to express his or her views freely and be heard:

In our initial submission, CAJ stated that the Review should consider advancing the principle of the rights of the child to be heard and to express his or her views freely. The Review report does provide some comment on this principle in relation to proceedings in the Youth Court. The Review report's observations are that in the Youth Court, the presence of the young person is largely an irrelevance and their understanding and participation is limited (p. 66). The Review report believes that this problem could be addressed through all judges, lay magistrates and lawyers working in the Youth Court being specially trained and accredited to work within a new, single youth court jurisdiction (p. 67). CAJ would urge that in formulating the content of such training, consideration should be given as to how it will ensure that the rights of the child to be heard and to express their views freely are fully realized.

In relation to the recommendation that the Youth Court become a single jurisdiction, CAJ would urge that consideration is given of the needs of court users, such as victims, witnesses and defendants. In our response to the Northern Ireland Courts and Tribunals Service (NICTS) consultation proposals on re-drawing County Court and Magistrate's Court boundaries in Northern Ireland, CAJ highlighted that court attendees with disabilities, the very young or the very old may find it difficult to travel further afield in order to attend a case.⁹ Children do not necessarily have the same level of access to transport as adults and often rely on adults to provide transport for them. This could potentially be most problematic in rural areas.

The issue of participation by the child in proceedings is also touched upon in the context of the setting of bail conditions. The Review report states that young people make little or no contribution to the setting of appropriate bail conditions and rarely consider their capacity to adhere to them (p. 56). It therefore recommends the participation of young people and their parents in the setting of any bail conditions so that they understand and fully accept their implications (p. 58). CAJ has previously highlighted the need for any bail conditions imposed on children to be clearly explained to both the young person and their relevant guardian in our response to the Northern Ireland Law Commission (NILC) consultation on bail in criminal proceedings¹⁰ and we would re-emphasize the importance of doing so here.

Further explicit consideration could have been given as to how to advance the right of the child to express their views freely and be heard at all stages. Article 12 of the UNCRC guarantees the right of the child to express their

⁹ CAJ's submission no. S254 'CAJ's Response to 'Reviewing the Map' – Consultation on Court Boundaries in Northern Ireland' April 2010

¹⁰ CAJ's submission no. S278 'CAJ's Response to the Consultation on Bail in Criminal Proceedings' January 2011

views in relation to all matters affecting them. The Committee on the Rights of the Child has previously stated that the rights contained within Article 12:

... must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. But it also applies to the stages of adjudication and of implementation of the imposed measures. In other words, the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child (art. 12 (1)), throughout the juvenile justice process.¹¹

Whilst this statement of the Committee is referred to in the separate analysis of children's rights (p. 70), CAJ is concerned that the main Review report does not appear to have examined the rights of the child to be heard and to express his or herself freely at every stage of the criminal justice system.

Using deprivation of liberty of children as a measure of last resort:

CAJ highlighted the principle that deprivation of the liberty of children should only be used as a measure of last resort and for the shortest appropriate period of time in our initial submission. We also highlighted in our submission to the NILC consultation on the use of bail in criminal proceedings concerns at the remand of young people by the courts and the police in Northern Ireland, especially considering the principle laid out in Article 3 of the UNCRC of the need to consider the best interests of the child. The Review report's conclusion that there is a disproportionate number of children refused bail and remanded in custody, in comparison with adults and other similar countries, is therefore a disturbing one (p. 11). The Review also highlights the over-use of the JJC as a 'place of safety' under the Police and Criminal Evidence (Northern Ireland) 1989 (PACE)¹² and the continuing practice of detaining children at the YOC, in the same facility as young adults.

In relation to remands in custody, the Review report states that typically around three-quarters of the juvenile custody population are on remand (p. 54). This contrasts with England and Wales, where around a quarter of the juvenile custody population are on remand. The Review report concludes that the JJC is being used as a remand centre, rather than for the purpose for which it was actually built (p. 55). The Review report rightly highlights that this is a breach of international standards. It recommends therefore that there be strict adherence to the statutory presumption in favour of bail, contained within Article 12 of the Criminal Justice (Children) Northern Ireland Order 1998 (p.

¹¹ UN Committee on the Rights of the Child (2007) 'General Comment No 10 Children's rights in juvenile justice', para. 44.

¹² Under PACE a custody officer may authorize the detention of a child to a place of safety if they have reasonable grounds for believing that the detention is in the child's interests.

58). The report states that in the main, this should be bail without conditions, but where conditions are necessary they should be relevant, proportionate and realistic (p. 58). CAJ welcomes these recommendations.

The Review report also describes the worrying problem of the over-use of the JJC as a 'place of safety' under PACE. It describes how PACE now accounts for most of the admissions to the JJC and that this rate is increasing. Generally this is because children will not have a place to return to following charge, although many of these children are in the care of the state. The report outlines how in 2010/11 PACE admissions constituted 62% of initial admissions to the JJC compared to just 47% in 2006/07 (p. 53). The Review questions the frequency of these admissions, given that around half of the children are subsequently released on bail following their first court appearance (p. 53). In our submission to the NILC, CAJ warned of the impact that such an inappropriate admission can have on a young person's family life, educational prospects and mental health.

The Review report rightly questions how children in the care of the state do not have a safe place to return to. CAJ therefore welcome the Review's recommendation that an appropriate range of supported and if necessary secure accommodation be developed, accessible at short notice, to reduce to an absolute minimum the use of the JJC at Woodlands as a place of safety under PACE (p. 53). We highlighted the need to make more appropriate accommodation available for children seeking bail in our submission to the NILC. However CAJ would have regarded it as more appropriate if it had been recommended that the use of the JJC as a place of safety cease altogether, rather than being kept to an absolute minimum. There is the potential there if provision remains to allow the use of the JJC as a place of safety, then its use will either persist, or having reduced, simply increase again.

The Review report describes how 17 year olds are routinely remanded in custody to the YOC (p. 25) and can be sentenced to custody there from age 16 (p. 27). The Review then goes on to note that under the UNCRC, children deprived of their liberty should be detained separately from adults (p. 52). In relation to the YOC, the Review report fully concurs with the opinion of the Prison Review Team (PRT) that it is an inappropriate environment for children, with an extremely poor regime, limited access to training and education and limited support to encourage desistance from offending (p. 76). The Final Report of the PRT recommends that children should not be held at the YOC.¹³ The Review report recommends this also, and states that all children should be transferred to the JJC. The Review report recommends that arrangements should be put in place to manage the transition of children to the JJC no later than 18 months from the publication of the report (p. 78). CAJ welcomes the recommendation that children be transferred from the YOC to the JJC as it will further the government's compliance with its

¹³ 'Review of the Northern Ireland Prison Service: Conditions, Management and Oversight of all Prisons' Prison Review Team, Final Report, October, 2011, p. 78

international human rights obligations under the UNCRC. However we would be concerned that, in light of the evidence available, the timetable recommended for arrangements to be put in place to manage this transition of no later than 18 months from the publication of the report seems unnecessarily long. For example, in an answer to an Assembly question (which asked in summary what progress was being made on ending the practice of detaining under 18's in the YOC) on the 24th October 2011, the Minister for Justice answered:

...My understanding when I checked the figures last week was that there were only eight under- 18s in Hydebank Wood in the course of the past year. As a result of initiatives by the Youth Justice Agency, the staff of Woodlands and others, and the Prison Service, 12 under-18s who were committed by courts to Hydebank Wood have been referred back to the courts on the basis of the assessment that they would be better transferred to the juvenile justice centre at Woodlands...¹⁴

Given the emphasis placed by the Minister on the small number of children being recently detained in the YOC and the efforts that have been under way to transfer children to the JJC, CAJ believes that a timeframe of a maximum of 18 months is excessively long. This is particularly so given that this timetable would only appear to apply, given the wording of the recommendation, to putting arrangements in place to manage the transition of children detained in the YOC, rather than to their actual transfer to the JJC once arrangements are put in place. CAJ would urge the DoJ as a matter of urgency to ensure that no children are detained in the YOC, or can be detained in the YOC in future. We would remind the DoJ of the recommendation of the Criminal Justice Inspection Northern Ireland (CJINI), contained in its recent inspection report in relation to the JJC, that by April 2012 all male children who are sent into custody should be treated equally with female children in that their default placement should be the JJC.¹⁵ This recommendation acknowledged that whilst legal and practical impediments exist at present, they are not insurmountable. CAJ would urge therefore that the DoJ deal with this issue as a matter of urgency and at the very least comply with CJINI's recommendation in relation to it.

Age of criminal responsibility:

In our initial submission to the Review CAJ highlighted that for many years, the children and human rights sectors have called upon government to raise the age of criminal responsibility. CAJ stated that the current age of 10 is in contradiction with the real meaning of the UNCRC.¹⁶ The Committee on the

¹⁴ Official Report (Hansard) Monday, 24th October 2011, Vol 68, No 1, Session 2011 – 2012, p. 7

¹⁵ CJINI, ETI and RQIA 'An Announced Inspection of Woodlands Juvenile Justice Centre', November 2011, paras. 2.27 - 2.28

¹⁶ Whilst Article 40 (3) of the UNCRC, which provides for the establishment of a minimum age of criminal responsibility it does not specify what that minimum age should be. The Committee on the

Rights of the Child states that a minimum age of criminal responsibility below 12 is internationally unacceptable. The Committee encourages states to ensure that their minimum age of criminal responsibility is no lower than 12, and then to continue to raise it to a higher age level.¹⁷

The Review report recommends raising the age of criminal responsibility. It recognizes that amongst compelling reasons for doing so is the need to reflect the spirit and the letter of international treaties (p. 106). The Review report recommends that the minimum age of criminal responsibility in Northern Ireland should be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14 (p. 107). CAJ supports this recommendation, but believes that following the implementation of this recommendation the minimum age of criminal responsibility should be subject to a process of periodic review, with the aim always being to increase the age incrementally, rather than attempting to lower it. Such action by the government would more fully reflect the meaning and spirit of the UNCRC as the Committee on the Rights of the Child's guidance suggests.

Prevention and early intervention:

CAJ's initial submission to the Review recommended that the youth justice system begin with a set of measures aimed at preventing children coming into the system. We advocated a holistic approach to this issue, involving not just the DoJ. We emphasized that under the UNCRC, parents are recognised as having responsibility for the upbringing and development of their children, but that it is vital that they have the necessary support in order to do so. Articles 18 and 27 of the UNCRC place duties on the state to take appropriate measures to assist parents and guardians in implementing the rights of the child.

CAJ welcome the level of consideration given to the principles of prevention and early intervention in the Review report. The Review report states that it is now widely recognised that investment in the health, education and parenting of children during their early years has a measurable and significant impact on their future life chances, including their likelihood or otherwise of engaging in criminal behaviour (p. 10). It recognizes that a holistic approach is to be promoted, stating that measures to prevent offending by children in isolation from other problems they, their families and their communities face have not proved successful while approaches that involve agencies and communities working together have had better results (p. 32).

Rights of the Child recommends that all state parties set a minimum age of criminal responsibility no younger than 12 years of age.

¹⁷ UN Committee on the Rights of the Child (2007) General Comment No 10 Children's rights in juvenile justice, para. 32. The Committee emphasise here that they wish to provide state parties with clear guidance and recommendations on the age of criminal responsibility, given the existence of a wide range of minimum ages.

The Review report also highlights that prevention and early intervention make economic sense, emphasising the relatively low cost of referring children to the Early Intervention for the Prevention of Offending project established by the Health and Social Care Board compared to the high cost of detaining children in the JJC (p. 33). CAJ agree that resources should be shifted from dealing with the consequences of problems to their prevention and that the Review rightly highlights the cost effectiveness of prevention and early intervention. However, given the Review report's acknowledgement of the increasing financial pressures facing government CAJ believe that the main Review report, in addition to highlighting cost effectiveness, should have reminded the government of its human rights obligation to ensure that the best interests of the child are given primary consideration in any budgetary decision and of the need to protect children in periods of financial uncertainty. This then should have been explicitly reflected this in the Review report's recommendations, as we have stated in relation to the issue of cooperation.

The Review report recommends that the Executive should develop an early intervention and prevention strategy and in order to support the shift in resource allocation and investment, set up an Early Intervention Unit. The Review report recommends that this should be a cross cutting, inter-departmental unit, to ensure that priority is given to early intervention across all government departments and to identify and remove barriers to pooled funding and collaborative working (p. 37). CAJ welcome these recommendations, provided that in practice they prevent children coming into contact with the youth justice system and lead to the more holistic approach which is required.

Diversion:

CAJ emphasized the importance of diversion as part of the strategy to prevent children entering the youth justice system in our initial submission. We again emphasized the need for various agencies and government departments, such as education and family and child services to work together in providing care.

CAJ welcome the Review reports affirmation that in the main, it is not in the child's best interests to be brought into the criminal justice system. CAJ agree that parents and guardians must respond to a child's misbehaviour and should be fully supported to carry out their responsibilities where necessary (p. 11). The Review report outlines how under the current system, the PPS determine whether the young person should be prosecuted, diverted from prosecution (where an admission of guilt has been made and the young person agrees to a diversion), or whether the case should be dismissed. Where a decision to divert the young person from prosecution is made, the young person may receive an informed warning, a restorative caution or a diversionary youth conference (p. 24).

The problems identified in the Review report in relation to how the PPS communicates the decision to offer a diversionary youth conference are of

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concern. The Review report states that currently, the PPS write to the child and the child's guardian, invite them to admit the offence and to participate in a youth conference. The letter does not however explain the implications of admitting the offence and agreeing to a conference. It is also noted that a large proportion of young people do not respond to this letter, as understanding it requires a high degree of literacy and familiarity with legal terminology and that many only agree to a PPS ordered conference after the matter has gone to court. The Review report acknowledges that this raises human rights concerns, as arguably when young people do respond, they are not doing so with full information, understanding or informed consent. It refers to Article 12 of the UNCRC and to the Guidelines on Child-Friendly Justice, which emphasise the importance of this principle in relation to children. In our initial submission to the Review, CAJ emphasized the importance of respecting legal guarantees and safeguards within all processes, as one of the guiding principles outlined by the United Nations Secretary General in the guidance note 'Approach to Justice for Children'. Whilst CAJ appreciates from the Review report that the PPS are aware of this problem and are actively seeking to improve this situation, we believe such improvements must guarantee that children can provide full and informed consent to a diversionary youth conference.

The Review report also recognizes that police have the ability to take no further action, but that in practice all incidents are processed as crimes. This is considered unhelpful, as in the first instance, it should be assumed that parents (or guardians) will deal with most minor offending as requiring parental discipline rather than criminal justice involvement (p. 45). CAJ agree with this conclusion but believe that parents and guardians should be given the support they need to help discipline their children.

However as the Review report notes some parents provide poor discipline, neglect or abuse their children, are addicted to drugs or alcohol, or have mental health problems. Therefore their children are recognised as being much more at risk of engaging in offending than other children. It is worrying that the Review report finds that schools, by failing in their responsibility to look after and control the pupils in their care, increase the risk that they will end up in the criminal justice system. CAJ also agrees with the Review report's conclusion that where there are serious welfare issues which need to be addressed, the criminal justice system should not be used as a way to access the services needed to do so (p. 47).

CAJ welcomes the Review report's acknowledgement of sound research evidence that shows that drawing young people into the criminal justice system risks further offending (p. 44). We therefore welcome the Review report's conclusion that the court system should be a system of 'last resort' for serious or persistent offending (p. 51).

Youth conferencing:

The Review report defines a youth conference is a meeting or series of meetings, involving the young offender, family members, various agencies and in most cases, the victim or a representative of the victim. They provide a forum for discussion about the offence and usually result in a conference plan that can include arrangements for an apology, reparation, compensation, service for the community, restrictions on conduct or whereabouts (such as curfews or electronic monitoring), or involvement in activities or programmes such as for alcohol or drug dependency (p. 25).

In our initial submission CAJ suggested that whilst there was room for improvement in the youth conferencing system, there is significant evidence that this approach can be effective. However, we also stated that youth conferencing does not work for all individuals and that repeated youth conference orders can be counter-productive. CAJ urged that further engagement be considered with persistent offenders to determine more effective mechanisms to support desistance from offending and that after a certain number of youth conferences, a new system should fall into place. The Review report broadly shares our views on the issues around youth conferencing. The Review report highlights the development of youth conferencing as being a strength of the youth justice system (p. 10). It states that re-offending rates are lower than for most other sanctions and that victim satisfaction is high (p. 12). However it is accepted that improvements in the system need to be made.

In relation to the issue of repeated youth conference orders, the Review report observes that when young people are required to attend more than one or two conferences, the ordering of the cases and how the young person can make sense of the conferences, plans and associated court appearances can cause difficulties (p. 63). The Review report suggests that intensive supervision combined with structured approaches to tackling offending and resolving problems may be a more effective approach to reducing the offending of persistent serious offenders than a conference plan. However, the Review report maintains that the conferencing process can have a significant impact at any stage on a young person and the menu of elements that can be part of a plan are sufficiently broad and flexible to allow for a bespoke response to address escalating offending. It also notes that the victim has a legal right to participate in a restorative youth conference, irrespective of the offender's involvement in previous conferences.

The Review report therefore recommends that it would preferable to require conference coordinators to exercise their discretion by referring appropriate cases back to court having spoken with the offender and the victim and having considered the offender's pattern of offending and previous responses to conference plans (p. 64). It states that this discretion would need to be accompanied by clear guidance and would need to be monitored.

CAJ believes that there are a number of issues that would need to be considered before taking forward this recommendation. We also note that

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having identified the possibility of using intensive supervision, as opposed to a conference plan, on a young person it would have been beneficial if the Review had gone on to explore this option more fully. CAJ believes that if conference coordinators are to have the discretion to refer cases back to court, the criteria upon which they make such a judgment must be fair and transparent. Reasons should be given for such decisions and the decision should be open to some form of review. CAJ thinks that the possibility of increased delay and confusion for young people by cases being referred back to court, possibly with the court having already ordered the youth conference, should be considered. Given the frequent reference to the problems of delay throughout the Review report, consideration should have been given to the issue in relation to this recommendation.

CAJ is disappointed that the Review did not fully consider the possibility of further engagement with persistent offenders in order to determine more effective mechanisms to support desistance from offending. Simply referring the case back to court will not necessarily achieve this goal.

Anti-Social Behaviour Orders:

CAJ stated in our initial submission that Anti-Social Behaviour Orders (ASBOs) appear at odds with the restorative ethos of the youth justice system in Northern Ireland. We reminded the Review that breach of an ASBO is a criminal offence that may result in a sentence of imprisonment. CAJ stated that it was time to rethink measure such as ASBOs, which criminalise young people. We outlined that the recommendations of the monitoring committee of the International Covenant on Civil and Political Rights (ICCPR) in 2008 were that ASBOs be reviewed and that young children should not be detained as a result of breaching the conditions of them.¹⁸ We also drew to its attention the concerns of the Committee on the Rights of the Child that ASBOs in practice can contribute to children's entry into contact with the criminal justice system.¹⁹

It is therefore hugely disappointing that the Review did not consider the use of ASBOs at all. We believe that this a major oversight and a missed opportunity to do so. CAJ understands that CJINI is currently undertaking a thematic review of anti-social behaviour and we hope that this will fully consider the use of ASBOs. The Home Secretary, Theresa May MP, launched a review of the use of ASBOs in England and Wales in July 2010.

¹⁸ Concluding observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland (2008) para. 20

¹⁹ Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland (2008), para. 79

This led to proposals being put forward for consultation in February 2011 that ASBOs should be repealed in that jurisdiction. CAJ would urge the DoJ to consider putting forward proposals for their repeal in Northern Ireland also.²⁰

Rehabilitation and reintegration:

In our initial submission to the Review, CAJ emphasized the idea that children who commit crime are open to rehabilitation. The Review report states that the high reconviction rates of young offenders serving custodial sentences are a reflection, in part, of the lack of adequate preparation for release, from day one of entry, and continuity of support post release (p. 13). It observes that the more deeply immersed in the youth justice system a young person becomes, the greater the likelihood that their offending behaviour will worsen rather than improve (p. 79). The Review report notes that young people who experience custody, whether on remand or through sentence, are at considerable risk of becoming detached from important support systems. This makes effective reintegration highly problematic, re-offending more likely and protecting the public very difficult (p. 80). The Review report identifies a number of significant barriers to desistance from offending, such as lack of qualifications, lack of stable accommodation to return to once released, no help with drug and alcohol problems and exile from communities due to threats from paramilitaries.

CAJ welcomes the Review's finding that those released from custody must be seen and treated as children first and offender's second. We agree that an integrated, multi-agency approach that includes continuity of support is required to rehabilitate and reintegrate children, starting from the first day they are in custody. It is very worrying that the Review report puts forward the impression that on the whole, rehabilitation and reintegration are not high priorities and consequently not well resourced in either the JJC or the YOC (p. 81). The Review report also identifies that one of the best ways of preventing re-offending is by providing young people with training connected to future employment. However, programmes providing this suffer from a lack of funding and support from public services, symptomatic of the low priority afforded to reintegration (p. 82). CAJ supports the Review's recommendation that greater priority should be accorded to the rehabilitation and re-integration of young offenders in custody and that they should be prepared for release from the outset (p. 85). However CAJ would have expected the Review to set out in further detail how this is to be achieved.

CAJ also regards it as a missed opportunity that having identified barriers to desistance from offending, such as those outlined above, the Review report makes no recommendations in relation to the provision of stable accommodation or the offer of help with drug or alcohol addiction.

²⁰ Home Office 'More effective responses to anti-social behaviour' February, 2011

Equality duty and consultation process:

In relation to equality issues, the Review report notes the existing equality provisions under Section 75 of the Northern Ireland Act 1998 and that this provision contains a specific category relating to age. It recommends that the NI Executive should make it clear to all public authorities that the age category in Section 75 of the Northern Ireland Act 1998 requires them to consider how their policies and practices impact on children and young people (p. 107).

In spite of this recommendation, this current DoJ consultation process itself has given insufficient consideration to the requirements of the statutory equality duty²¹ and the DoJ's own commitments outlined in its draft equality scheme.²² In this instance, public meetings were not scheduled until roughly two-thirds of the way through the consultation period and we understand the first of these meetings occurred at short notice. It is difficult to see how this decision could be seen as effectively engaging with affected individuals and representative groups as early as possible. Furthermore a child accessible version of the Review report was only released towards the end of November. In these circumstances it is difficult to see how effective consultation with children and young people could be said to have begun as early as possible and without barriers, when a child accessible version of the Review report was released again roughly two-thirds of the way through the consultation period.

**Committee on the Administration of Justice
January 2012**

²¹ The Equality Commission's Guidance for Public Authorities on Section 75 states that consultation with affected individuals and representative groups should begin as early as possible. This guidance further recommends that public authorities engage with affected individuals and representative groups to identify how best to consult or engage with them and that appropriate measures are taken to ensure full participation in any meetings that are held. It also states that the accessibility of the language and the format of information be considered to ensure that there are no barriers to the consultation process (Equality Commission for Northern Ireland (2010) Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, p. 38 – 39)

²² The Equality Commission's Guidance is reflected closely in the DoJ's own draft equality scheme, which includes a commitment to initiate consultation with all stakeholders as early as possible, engage with affected individuals and representative groups to identify how best to consult or engage with them and considers the accessibility of the consultation format in order to remove barriers to the consultation process (Department of Justice 'Equality Scheme for the Department of Justice 2011-2015' (Draft) March 2011, paras. 3.5 – 3.6)

