

include YOUTH

**Response to the Department of Justice consultation on proposals on the use
of live links for police detention/interviews**

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Include Youth

Include Youth is an independent non-governmental organisation that actively promotes the rights, best interests of and best practice with disadvantaged and vulnerable children and young people.

The young people we work with and for include those from socially disadvantaged areas, those who have had poor educational experiences, those from a care background, young people who have committed or are at risk of committing crime, misusing drugs and/or alcohol, engaging in unsafe or harmful sexual behaviour, or at risk of being harmed themselves. We provide a range of tailored employability programmes for these young people, including programmes in partnership with community-based organisations.

Our Give & Take Scheme adopts a youth work approach to improving the employability and increasing the self-esteem and confidence of young people aged 16 to 24 who are not yet ready to participate in mainstream training.

Many of these young people have experienced social exclusion, poverty or have other complex challenges in their lives and therefore need additional support to overcome these barriers and positively progress their education, training or employment needs. Seventy-five per cent of young people on the Scheme are care experienced, while over a third has a background in offending. We offer a range of tailored programmes including

- Core - for young people referred to us through the Health Trusts
- Start Programme – a collaborative partnership programme with community based organisations, targeted at young people in the North Down, Ards and Belfast areas
- Outreach - for groups or organisations throughout Northern Ireland
- One to One - for young people at risk of child sexual exploitation
- Transitional support - for those moving on from our Scheme and into mainstream education, training or employment

- Strive – a cross community, cross cultural, and cross border programme that engages young people in good relations, person development and citizenship.

Our main offices are in Belfast, Armagh, Ballymena, Derry, Enniskillen, Newtownards and Omagh.

Include Youth also delivers an Employability Service on behalf of two of the five Health Trusts for young people aged 16 + who have had experience of the care system. This service is designed to offer tangible and concrete opportunities to assist young people leaving care to prepare for and engage in work.

Include Youth also engages in policy advocacy work in the areas of employability, youth justice and policing. This work is informed by relevant international human rights and children's rights standards, is evidence based, including that provided by young people and practitioners and is based on high quality, critical analysis.

General Comments

Include Youth welcome the opportunity to comment on the proposal to use live links for police detention/custody. Our comments relate to the possible impact of these proposals on children and young people.

We have responded to several consultations on the use of live links over the years and made clear our view that the use of live links raises issues of informed consent to participate and it never should occur where there is a risk of prejudicing young person's access to justice and fair trial.

In previous responses we have recommended that there should be a review of the use of Live Links, monitoring progress and outcomes in cases which are proceeded using video link, to help identify whether there is any adverse impact. We further stated that this review should involve full consultation with young people.

We further recommended that a full review should be carried out in advance of any proposals being drawn up to extend the use of Live Link.

We are therefore disappointed that a further proposal to extend the use of live links has been made without a review having been undertaken on its use, identifying potential problems and suggestions for improvement.

We note that the consultation document refers to the fact that all the proposed functions in relation to the use of live links are already available to police forces in England and Wales by virtue of the Policing and Crime Act 2017. We are aware that there has been considerable criticism of the extended use of live links in England and Wales and that a number of children and young people's rights advocates have highlighted the absence of rigorous research on the impact of the use of live links on children and young people's rights and protections.

'A survey of practitioners working with children in court found that live links make it difficult for children to: communicate; read body-language; understand proceedings; ask questions; or ask for clarification. It thus inhibits participation and engagement – children feel more detached from the process. Practitioners reported that "teenage behaviour" is more likely to be misinterpreted over live link and that children's vulnerabilities are less likely to be identified. What is more, children underestimate the seriousness of situations over live link, which makes poor behaviour more likely.' (SCYJ, 2017)¹

A number of groups have produced relevant and substantial information which highlights the numerous difficulties and potential breaches of children's rights with regard to the use of live links, including:

- Detrimental impact on the child's ability to understand processes
- Lack of communication between all relevant parties
- Impediment to child's communication and interaction with their legal representative
- Potential for child to disengage from process
- Particularly problematic for children with speech and language difficulties and physical and mental disabilities

¹ <http://scyj.org.uk/wp-content/uploads/2017/12/FINAL-SCYJ-response-PACE-Code-C-consultation-2017.pdf>

The Standing Committee for Youth Justice (SCYJ) published a substantial report in 2018 on the topic of child defendants and the use of live links.²

‘This slow but steady change to the administration of justice has occurred with little scrutiny or consultation, and there is a dearth of research into the impact appearing on video can have on a defendant’s ability to effectively participate in their hearing, and on justice outcomes. There is even less available research that specifically considers the impact of ‘virtual justice’ on vulnerable groups, especially children.’

Transform Justice also published a report in 2017 which addressed the lack of information on the impact of live links on vulnerable groups.³

‘This report suggests that virtual justice may not be more efficient, may not deliver the cost-savings it is meant to do, and may compromise human rights and confidence in our justice system.’

We would recommend that the Department consider the findings from the referenced reports when deciding on the extension of the use of live links for police detention and interviews in relation to children and young people.

Specific Comments

Consultation process

We would welcome details on how the Department has consulted directly with children and young people with regard to these proposals.

While we welcome the fact that we were sent details of the current consultation via electronic mail directly from DoJ, we note that the consultation document does not appear to be available on the Consultations section of the DoJ and PSNI websites.

² <http://scyj.org.uk/wp-content/uploads/2018/04/SCYJ-Child-defendants-and-video-links.pdf>

³ <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>

Equality Considerations

We are concerned about the Department's assessment that an equality impact assessment is not required.

The document acknowledges that the proposed change is most likely to impact on male suspects as males accounted for 83% of arrests under PACE. We would be keen to know what the age breakdown of arrests under PACE are and in particular the number of arrests relating to children and young people. We do not think the document supplies adequate information or sufficient detail on the grounds on which the decision not to conduct an equality impact assessment were made. We are concerned about the level of evidence on which it was decided to screen out the proposal for a full EQIA.

We are also concerned about the rationale for introducing the use of live links. The consultation document states that:

‘the introduction of the proposed arrangements would be beneficial in ensuring timely and efficient reviews, whilst enabling better management of resources and cost saving efficiencies in policing, with no adverse effect in Section 75 terms.’

An efficient youth justice system is in the best interests of children and young people; however, administrative ease or financial expediency must never take precedence over the rights of these often vulnerable children and young people.

Young People's Participation and Level of Understanding

There is evidence to suggest that young people have difficulty understanding processes when conducted through live links.⁴

There is an obligation under Article 12 of the UNCRC, which includes the child's right to be heard and to fully participate in judicial and administrative proceedings affecting him or her. Understanding and participating in proceedings are essential to a fair hearing under Article 6 of the European Convention on Human Rights.

A child's right to a fair trial is enshrined by Article 6 of the European Convention on Human Rights (ECHR) and enhanced by Article 40 of the United Nations Convention on the Rights of the Child (UNCRC). It is generally accepted that in order for someone to exercise their right to a fair trial, they must be able to effectively participate in the process (UN, 2007; UN, 1985 Para 14.2). "Effective participation" presupposes that the defendant has a broad understanding of the nature of the proceedings, what the implications are, and, if necessary with the assistance of, for example, an interpreter or lawyer, an understanding of the general idea of what is said in court (SCYJ, 2018)

Young People's Views

In preparation for our responses to previous consultations on the use of live links we conducted consultations with young people in both the Juvenile Justice Centre and Hydebank College to ascertain their views and experiences of Live Links.

Our consultation with young people suggested that there are significant problems with technical difficulties in the use of live links. The following quotes were submitted as part of our previous responses and give some insight into potential difficulties on the use of live links.

Young People's Views on Live Link

⁴ Standing Committee on Youth Justice, Response to PACE Code C consultation, 2017, <http://scyj.org.uk/wp-content/uploads/2017/12/FINAL-SCYJ-response-PACE-Code-C-consultation-2017.pdf>

Technical Problems

“You can’t hear properly in video link.”

“It all crackles and you can’t hear what’s going on.”

“In the Belfast court, you can’t hear the judge talking, if other people in the court are talking.”

“Sometimes it can’t even connect.”

“I didn’t hear what was being said because the video link wasn’t working properly.”

“Sometimes, you can’t even get through, the link doesn’t work, and you have to wait for the court to ring you and tell you what’s happened just, what’s been said in court.”

“I went to video link once and I just sat waiting, then got a call to say I hadn’t got bail, but because it didn’t connect I didn’t hear what was said because the video link wasn’t working right.”

“You can’t hear what people are saying.”

Removed from proceedings – less chance to have a say.

“In video link it’s like you’re not there, not in court.”

“It doesn’t feel like you are in court when you use video link.”

“It’s just harder to get say with video link.”

“It’s hard to get your say in court anyway, but video link is even worse.”

“You have to shout out to be heard.”

“In video link you don’t get to say nothing – because the judge doesn’t look at you and talk to you, they talk to your solicitor just.”

“Sometimes they (solicitors) ring you just in video link, to tell you what’s happening. Usually they tell you what’s going on, but you’d rather be there so they can tell you direct and you can ask what’s going on.”

“Sometimes on video link the judge talks to the others in the court, about you, but not to you.”

“When I’m in court I make sure I get my say, but in video link you don’t know how, because you don’t know if they are looking at you or not.”

“They talk as if you are not there on video link, as if you’re not listening.”

The positives of going to court

“If you can get out to court people can give you stuff .”

“You can get out and see people if you go to court – your family.”

“You can get out and have a smoke.”

“You get out of custody for a while, that good.”

Questions about process

“But who decides – is it the judge or the solicitor? It should be you who gets to decide whether you want to use video link or not.”

“Once there was two people here in the video link and they thought it had been turned off, but the court could hear them talking – staff and a young person – they nearly got done for contempt of court.”

Reasons why you might want to use video link instead of being in court.

“The only reason I don’t like going to court is because you are waiting in the cells for ages – all day sometimes – especially in Belfast court.”

“Because you don’t have to wait in the cells – it can take ages before they bring you down to the court and your heads melted.”

“And you can get stuck in a cell with a nutter – it can be adults or anyone. “

*“I’ve been taken out of custody to court a few times, waited there for ages, then told there’s no need for me to be there, they can f*** it all up sometimes, the courts, make mistakes and drag you up there for no reason.”*

“Video link is handy, you don’t have to leave custody/ secure.”

“I hate court. See everybody talking about you and especially when the judge tries to make an eejit out of you.”

“There’s no reason for not wanting to use video link I don’t think.”

The use of video link depends on circumstances

“It depends what you are in court for, like if I was up for bail, I’d want to get my day – because the cops always say lies about me, so I want to be able to have my say. But if it’s just something stupid you’re in court for, like you know what’s going to happen, when you just stand and they say something to you, then you sit down and that’s it, I’d rather use Video Link.”

“Sometimes video link is better, sometimes it’s not – it just depends what you’re up for, why you have to go to court.”

Do you feel you were able to take part fully?

“You don’t know what’s happening.”

“No one lets you know what to do.”

“You can’t hear what’s happening.”

“You can hear the judge but no-one else.”

“I would prefer face to face.”

Engagement with solicitor

“No, it’s a lot different speaking face to face than video link, you can’t understand what they (solicitor) are saying.”

“I feel there should always be face to face consultation with solicitors than over video link.”

“I always get a chance to talk to my solicitor.”

These conversations with young people suggest that there were a number of issues that were problematic with the use of live links.

- Young people did not appear to be fully aware of the available options when it comes to using live links
- Young people using live links felt removed from the process

- Technical problems were an issue and some young people could not accurately hear proceedings
- The quality of the engagement with solicitors appeared to be called in to question

We would seek reassurance that the issues previously raised by young people have been adequately addressed, before the current proposal to extend the use of live links in the context of police detention and interviews is taken forward.

We are concerned that children and young people will not be able to fully understand, participate and engage in police interviews carried out by Live Link. We would like to see evidence of good quality research demonstrating that the use of Live Link does not impact negatively on the behaviour of young people or on the outcomes of the process.

We note that the consultation document states that:

‘The Chief Constable must be satisfied that the live link system is fit for purpose and provides for an accurate and secure communication between the detainee, the detainee’s solicitor, appropriate adult, registered intermediary and interpreter if required.’

We would welcome further detail on how the assessment on whether the link system is ‘fit for purpose’ will be conducted, reported on and who will be involved in making that judgment. What steps will be taken to ensure the detainee regards the system to be ‘fit for purpose’ and to ensure their views are taken into account?

We share the concerns of our colleagues from SCYJ who stated in relation to the use of Live Link generally that:

‘the evidence indicates that the government should be placing additional constraints on the use of video link for children, rather than seeking to increase its use via additional legislation’.⁵

⁵ <http://scyj.org.uk/wp-content/uploads/2018/04/SCYJ-Child-defendants-and-video-links.pdf>, page 8

Conclusions

Include Youth is concerned about the expansion of the use of live links with regard to how it may impact on children and young people and do not believe the necessary checks and safeguards have been put in place to ensure that young people are not disadvantaged by the use of the technology. We share the concerns of our colleagues from SCYJ who state that:

‘the evidence indicates that the government should be placing additional constraints on the use of video link for children, rather than seeking to increase its use via additional legislation’.⁶

We look forward to working with the Department of Justice on this matter and in particular on any steps they may take to review the experiences of young people’s use of live links.

⁶ <http://scyj.org.uk/wp-content/uploads/2018/04/SCYJ-Child-defendants-and-video-links.pdf>, page 8