

include YOUTH

Include Youth Response to the Department of Justice Review of Anti-Social Behaviour Legislation in Northern Ireland Consultation

July 2018

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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 have 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

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

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. We also deliver a joint employability mentoring project with Business in the Community.

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.

Include Youth welcomes the opportunity to respond to the Department of Justice's consultation on Anti-social Behaviour Legislation in Northern Ireland. We strongly anticipate that the measures proposed will have a significant impact upon the young people with and on whose behalf we work. Include Youth have in the past raised concerns over approaches that have been taken to reduce Anti-Social Behaviour^{1 2}. Our concerns in this response mirror those that we have expressed to the changes proposed in those earlier consultations as we believe that there is still a fundamental flaw with the approaches taken to tackle anti-social behaviour. While the Department of Justice consultation document reviews four developments in tackling anti-social behaviour, Include Youth wish to base their response primarily around the proposed introduction of Criminal Behaviour Orders (CBOs) as we believe these will have the most damaging impact on the vulnerable groups of young people we work with.

Consultation

Within Section **5.3** and **3.10** of this policy consultation, the Department make reference to the small working group, key partners and stakeholders that they worked with in the drafting of this report. These groups involved the Department of Justice, the PSNI and

¹ Include Youth (2004) *Response to Measures to tackle Anti-Social Behaviour in Northern Ireland Consultation Document*

² Include Youth (2006) *Response to Northern Ireland Housing Executive Statement of Policy and Procedures on Anti-social Behaviour Consultation Document*

Belfast City Council. We call for more information on the discussions that were had within these working groups and evidence from these partners and stakeholders for the need and support for the change to legislation around Anti-Social Behaviour.

As a children's rights organisation, Include Youth believe that children and young people should be given the opportunity to contribute to policy matters that affect them and that this opportunity should be presented at all stages of the policy process. We are concerned that these proposals are being made without consideration of those who stand to be most adversely affected by the provisions- that is, children and young people. In this way, we believe that the Department of Justice is falling short of its responsibilities outlined in Article 12 of the UNCRC³ and are frustrated that, despite previous recommendations, children and young people have still not been consulted in the drafting of the consultation document and associated proposals. We believe that young people, and organisations that work with young people, should have been involved in the pre-consultation stage and should have had an opportunity to feed into the draft proposals before the official consultation commenced.

We are also concerned that this consultation makes no reference to any Equality Impact Assessment (EQIA) that the Department of Justice are required to carry out under section 75 of the Northern Ireland Act 1998. This document provides no information of a screening exercise and/or the results of such exercise, nor does it acknowledge the need for an equality assessment to be carried out with those that will be adversely impacted by the changes in legislation. The consultation document repeatedly references young people (4.2, 5.7, 5.8, 5.9) so it is clear that the Department identifies young people as one of the main groups who will be impacted on by these proposals. Such an assessment exercise should have been used by the department to inform their decisions about which legislative changes they wish to make, rather than being carried out once these decisions have been made whereby there is no scope to alter their decisions.

Although initially not provided at the same time as the main consultation document and only on request, we do commend the Department of Justice for issuing a young people's version of this consultation. We believe that it has been effective in producing accessible information for children of all ages that can be used to inform them of the proposed

³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> (Accessed 24/07/2018)

changes to the legislation. We urge the Department to continue to move in this positive direction and utilise the feedback from children and young people in considering the implications of changing this legislation. We are concerned that the child friendly version of the consultation document and the desire to gain feedback from children and young people has not been well advertised or promoted by the Department of Justice. Thus, we question the quality and representativeness of the responses that the Department of Justice will receive in relation to the views of children and young people. We would be keen to hear of the engagement that the department has had with children and young people to date or any plan that they have for future engagement. To ensure that those from more disadvantaged backgrounds are being heard, Include Youth has taken the opportunity in writing this response to consult with young people from marginalised backgrounds and will include the views of these young people within our response. These young people include those from a care-experienced background that we work with directly, along with young people who were detained within Woodlands Juvenile Justice Centre at the time of consultation.

Specific Comments:

Within Section **3.1** of the draft policy consultation, anti-social behaviour is defined as '*a broad range of inconsiderate and nuisance behaviours covering many types of activity*'. As we have done in the past in relation to the introduction of ASBOs, Include Youth once again raise concerns over the broad scope of activities that could fall under this definition and the vagueness of such a definition. We believe that failing to provide a transparent definition of what exactly constitutes inconsiderate or nuisance behaviours ensures that anti-social behaviours become subjective and open to interpretation. Doing so may potentially be a violation of Article 6 of the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights in which everyone has the right to a fair trial which includes the right to be informed promptly, in a language that is clear to them, of the nature and the cause of the accusation against them. We also believe that if implemented, the proposals would appear to be out of line with the government's commitments as signatories to a number of international treaties and conventions, for example, the UNCRC, the UN Guidelines for the

Prevention of Juvenile Delinquency (Riyadh, 1990), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing, 1985).

Failing to provide a clear definition of anti-social behaviour that can be articulated to those that are being accused of such acts violates this right. Without a clear definition the application of an Anti-Social Behaviour Order (ASBO) is left to the judgements made by those who have the power to administrate it on what constitutes anti-social behaviour. Include Youth are concerned that this could lead to decisions being made arbitrarily. It also raises concerns about how ASBOs are measured, monitored and evaluated. More than this, the conflicting language of Section 3.2 of the consultation document causes confusion, and this confusion is found in the corresponding section of the child friendly version of the report. As such, the section states that anti-social behaviours are not criminal behaviours but later goes on to state that some of the behaviours that are deemed to be anti-social can also constitute criminal behaviours. We believe that having this conflicting definition is unhelpful and that criminal behaviours should be dealt with under criminal law. The arguments around the problems associated with blurring the lines between civil and criminal behaviour, in particular with regard to children and young people, were outlined in Include Youth's response to the Anti-Social Behaviour consultation in 2004 and we would refer the Department to the attached document for further information. We recommend that the Department of Justice develop a clearer definition of what constitutes anti-social behaviour as we feel this would be of benefit to the administrators, the receivers, as well as, the general public.

Section 5.8 of the consultation document also raises grave concerns for Include Youth as an organisation that works with vulnerable young people. As such, the Department states that *"When deciding whether to publicise a CBO, public authorities must consider that it is necessary and proportionate with the young person's right to privacy, and the likely impact on a young person's behaviour"*. Include Youth believe that there will never be a situation whereby publicising a CBO in the case of a young person is necessary and proportionate. We raise immense child protection concerns with regards to this statement and wish to highlight that, in the context of Northern Ireland, publicising a CBO in the case of young people can expose them to an increased risk of paramilitary attack. Publicising in the case of a child is a breach of the UNCRC and the ECHR, whereby it is prohibited in all other types of

cases involving children. We believe that this should be no different in relation to ASBOs/ CBOs. Include Youth therefore recommend that the Department amend the proposed legislation to reflect this.

From a children's rights perspective, it is our belief that anti-social behaviour should be tackled through preventative, diversionary and supportive services particularly where the case involves a child who may be vulnerable or in need of help. While we acknowledge that the Department of Justice aim to bring in CBOs, which are focused around providing support services for ASBO receivers, we have a number of criticisms of this process. While providing support to those who have received an ASBO provides benefit, requiring the individual to be in court and be sanctioned with a CBO in order to receive this support is unjustified. We also raise concern over the nature of this support and call upon the department to provide more information of where the resources for such support will come from and why these services cannot be offered to individuals before being sanctioned with a CBO. Resources placed into preventative, diversionary activities and support without the involvement of the criminal justice system is a more effective way of challenging anti-social behaviour.

We also call upon the department to provide more information on any sanction that may occur in failing to comply with the requirements of the order. In England and Wales, it is a criminal offence if an offender fails to comply, without reasonable excuse, with the prohibitions and/or requirements in the CBO. As the Department of Justice are proposing using the same legislation as England and Wales, it can be assumed that this criminal sanction will accompany the CBO but the department should make this clear. If this is the case, the department must be aware of the characteristics of the individuals that are most likely to receive an ASBO/ CBO and recognise that complying with services and their requirements can be difficult for those with complex issues. We ask for the department to provide information on what their protocol for dealing with young people who fail to comply with their CBO is and how they plan to tailor it for those that have complex needs.

We are confused about why these new powers are needed given the current existence of a range of disposals for dealing with criminal behaviour of young people, such as Youth Conference Orders, which also make programmes available to address the causes of offending. We would welcome more detail on why the Department feel that additional

powers are needed. We also question the rationale for the introduction of a CBO as an extension of an ASBO when ASBOs have been proven hard to implement and ineffective in reducing anti-social behaviour. We would welcome evidence that suggests that CBOs have been effective in England and Wales and thus, why the department think they should be implemented in Northern Ireland. We also question how the department feel that they will be able to implement these four new legislative practices alongside the admission that there is legislation already in place in Northern Ireland that is unable to be implemented due to practical challenges. We ask the department to provide more detail of these practical implications and how they aim to overcome these for the introduction of these new legislative practices. Further, we question why the department have outlined that most anti-social behaviour occurs on two days of the year (St. Patricks Day and 12th July) but yet, have taken an approach that can be used all year round. Finally, we question the contradictory nature of Section 7.1 whereby the department state that anti-social behaviour has reduced in recent years, but the past two years are indicating a rise in such behaviour. The department should provide more clarity on the trends and statistics of anti-social behaviour to allow for a more informed decision to be made about the need to make additional powers to tackle such behaviours.

Views of Young People:

We asked young people what they think an individual can get an ASBO for. Their responses included a number of activities:

'Drinking; Noise Complaints; Robbing someone; Causing a fight; hanging out in a big group; Standing in the street drinking and causing problems; Drugs; Rioting; Spraying the wall.'

We then asked the young people their views on anti-social Behaviour and ASBOs.

"It's too easy to breach an ASBO and if you breach them it's bad"

"I got arrested for drinking and then ended up resisting and I ended up with a serious charge"

"I'm not worried about myself, I'm worried about the generation to come, my wee brother is 7 years old and this (introduction of CBOs) would worry me"

“Not everyone needs anger management and takes drugs; at a certain age, you just want to hang around the street. There is not enough to do, like there are clubs but they are only for a few days a week. Maybe there needs to be a centre to open up and that would help”.

“If there is a child behaving badly, their parents should deal with it. There should be lessons for parents on how to deal with their child’s behaviours”

“Why can’t they give them help without giving them the order? The only thing that is good about it is that it will bring support back to the young people, like from the likes of FASA, but they shouldn’t have to get an order to get that support” (Staff Member at the JJC).

Conclusion:

Include Youth welcomes the opportunity to comment on the Department of Justice’s consultation on reviewing the current legislation framework to tackle anti-social behaviour in Northern Ireland. We are concerned that the department has suggested applying legislative practices that have been used in England and Wales without exploring and/or producing evidence of whether or not these practices work and without providing sufficient evidence on why these additional powers are needed in NI. Drawing heavily on our 2004 response to measures introduced to tackle anti-social behaviour, we raise concerns that the Department are proposing legislative practices that will harm vulnerable groups of young people, fail to comply with human rights standards and will take resources away from other practices that would be more effective in tackling anti-social behaviours. We hope that our comments have been constructive, useful and will contribute to the further development of this process. To that end, we are more than happy to meet with you to discuss anything in this response. We wish to be kept fully informed of progress in the development of these proposed changes to the legislation and look forward to the issues raised and recommendations made in this response being addressed. We also look forward to receiving your response to the questions we have asked in the response and receiving the additional information requested. In addition, we would be grateful to receive a copy of your analysis of responses when it becomes available.