

# include YOUTH

**Future Operation of the Office of the Police Ombudsman for Northern Ireland**

**Consultation Response**

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## Introduction

Include Youth is an independent NGO that has been in existence since 1979. The organisation promotes the rights and best interests of and best practice with young people in need or at risk. We undertake activities aimed at influencing public policy and policy awareness in the areas of youth justice and education, employment and training of young people. Include Youth works directly with young people to support them to be engaged with policy decision making processes through our Young Voices project and to improve their employability through our Give and Take Scheme. We produce resources and provide training, information and support to practitioners and organisations.

## General comments

In responding to this consultation Include Youth recognises that there are particular drivers for the current reform process underway, including the McCusker report<sup>1</sup> commissioned by the Department of Justice, the Criminal Justice Inspection Northern Ireland report<sup>2</sup> and the independent NGO Review undertaken by the Committee on the Administration of Justice.<sup>3</sup>

Given this context and indeed the focus of the consultation questions it could be seen as being at some remove from children and young people's engagement with the police and their need for an effective complaints mechanism. However, **the central underlying issue as stake in the consultation is the lack of confidence in the current system for investigation of complaints against the police, which is of direct and major relevance to children and young people.**

The importance of 'getting policing right' with children and young people, and this extends to the provision of an effective complaints system, cannot be overemphasised, not only because the PSNI act as one of the main gatekeepers into the criminal justice system but also because the acceptance and legitimacy of the PSNI continues to be a critical factor in ensuring that peace is secured for future generations.

However the scale of this challenge continues to be very significant-since the publication of the Patten Report in 1999, research has consistently demonstrated that young people's perceptions and their experiences of the PSNI have remained negative.<sup>4</sup> The findings of

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<sup>1</sup> McCusker, T. (2011) Police Ombudsman's Review Department of Justice

<sup>2</sup> Criminal Justice Inspection Northern Ireland (2011) An inspection into the independence of the Police Ombudsman for Northern Ireland: CJINI

<sup>3</sup> Committee on the Administration of Justice (2011) Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland; CAJ Belfast

<sup>4</sup> McAlister et al( 2010) Childhood in Transition Experiencing Marginalisation and Conflict in Northern Ireland, Belfast: Queen's University Belfast, Save the Children and Princes Trust; Byrne, J. and Jarman, N. (2010) *Ten Years after Patten Young People and Policing in Northern Ireland*, Institute for Conflict Research and University of Ulster

published research have been reinforced by consultations conducted by Include Youth and other organisations with young people who have had direct contact with the PSNI.<sup>5</sup>

Contributing to these negative perceptions is the continued non-compliance of policing, at both policy and operational levels, with international children's rights standards. A number of examples of such non compliance have been highlighted by the UN Committee on the Rights of the Child and include the lack of training on children's rights for police officers, the use of police technologies against children and young people, including plastic bullets and tasers and the use of ASBOs against under 18s.<sup>6</sup> Other breaches include the disproportionate use of stop and search against young people<sup>7</sup> and the release of images of young people to the media.<sup>8</sup>

All of this serves to underscore the vital importance of there being an accessible and effective complaints mechanism for children and young people.

International children's rights standards are very clear on the difficulties facing children and young people in pursuing remedies for breaches of their rights and the importance therefore of their having access to an independent complaints procedure.<sup>9</sup>

The mechanisms in place for children and young people to make complaints, their awareness of these mechanisms, how complaints are investigated and how the PSNI responds to the outcome of those investigations, are crucial elements in ensuring accountability and in building confidence among children and young people in policing. Central to the duties of the Northern Ireland Police Ombudsman's office is the securing of "an efficient, effective and independent police complaints system"<sup>10</sup> and to recommend, where appropriate, prosecution and or disciplinary action against officers. This service extends to children and young people without discrimination.

**Regrettably it is Include Youth's view that the Police Ombudsman's office has to date failed to function as an effective complaints mechanism for over a quarter of the population in Northern Ireland – our children and young people.** We are not alone in this view. Most recently the independent Review of the Youth Justice System in Northern Ireland highlighted the lack of prioritisation of young people within policing and in particular

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<sup>5</sup> Youth Safety Network (2011) Young People's Views and Experiences of the Youth Justice System A Submission to the Youth Justice Review. Challenge for Youth, Alternatives, Terry Enright Foundation, Include Youth

<sup>6</sup> UN Committee on the Rights of the Child (2008) Concluding Observations. United Kingdom of Great Britain and Northern Ireland, paragraphs 21, 31,35 and 80

<sup>7</sup> Recent research found that the second most common form of contact young people had with the PSNI was that of being stopped and searched (29%) Source: Beyond the Margins. Building Trust in Policing with Young People, Achieve Enterprises and Public Achievement, March 2010, p18

<sup>8</sup> Northern Ireland Policing Board (2011) Human Rights Thematic Review Children and Young People;NIPB page56

<sup>9</sup> UN Committee on the Rights of the Child (2003)General Comment No 5, paragraph 8

<sup>10</sup> [www.policeombudsman.org](http://www.policeombudsman.org)

the PONI's " *practice of not routinely encouraging, facilitating, collating or reporting on complaints by young people under the age of 16*".<sup>11</sup>

Previously the Northern Ireland Policing Board's Thematic Review on Children and Young People highlighted the fact that "a number of stakeholders raised the issue of complaints against the police by young people with the majority submitting that young people are not aware of their right to complain, do not trust the PSNI internal complaints system and do not in any event have faith in the system itself".<sup>12</sup> The Review concluded that this issue needs to be addressed by all those organisations responsible for the oversight of the police service.

**We believe that this consultation and the concomitant reform process presents a key opportunity for the Department of Justice and the Police Ombudsman's office itself to examine the reasons why the office has not worked for children and young people and to take steps to ensure that this is urgently rectified. We make a number of recommendations in this response as to how this can be done.**

**We are encouraged by the appointment of the new Police Ombudsman, given his background in and understanding of the wider issues affecting children and young people in conflict with the law and believe that he possesses the skills, expertise and commitment to ensure that the ongoing reform process within the Ombudsman's office also addresses the serious issues raised in this response.**

### **Approach taken to this consultation response**

As stated above Include Youth recognises the relevance of a number of the consultation questions to ensuring that there is an accessible, robust and above all, independent police oversight mechanism in place for children and young people, as for all other sections of the population. However some of the consultation questions, particularly those that relate to how historic cases have been handled are outside of the remit of Include Youth and as such we will not be commenting on them.

**Our primary motivation for responding to this consultation is to bring to the attention of the Department of Justice and the Ombudsman's office itself the urgent need to address the serious failure by the office since its establishment to act as an effective police complaints mechanism for children and young people. We will therefore address this issue firstly before moving on to address a number of the specific consultation questions, before finally making a set of recommendations for change.**

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<sup>11</sup> Department of Justice (2011) A Review of the Youth Justice System in Northern Ireland : DOJ,Page 41

<sup>12</sup> Op cited at note 8, Page 108

## **Compliance with Section 75 of the Northern Ireland Act 1998**

The Equality Commission's Guidance for Implementing Section 75 of the Northern Ireland Act 1998<sup>13</sup> is very clear with regard to the need for designated public authorities to carry out screening and EQIA's on all policies.

We also note that the Department of Justice's newly approved Equality Scheme<sup>14</sup> which the Office of the Police Ombudsman is operating under makes a commitment carrying out screening exercises and EQIA's in line with the Equality Commission's Guidance<sup>15</sup>.

We wish to seek clarification as to whether the Department has screened its proposals for the future operation of the Office of the Police Ombudsman in Northern Ireland in compliance with Equality Commission's guidance and the Department of Justice's Equality Scheme. We have not been aware of any direct consultation with children and young people as required under the Equality Commission's guidance.

## **Awareness of the Police Ombudsman's office among young people**

Figures provided by the Police Ombudsman's office indicate a high level of awareness of the office among the general public, with 84% of people aged over 16 indicating that they were aware of it (albeit that no definition of what constituted 'awareness' was provided).<sup>16</sup> **This contrasts sharply with the very low levels of awareness of the office and its functions among young people generally.**

Research jointly commissioned by the Policing Board and the Police Ombudsman in 2003 found that level of awareness of Police Ombudsman among young people was low, with only half the sample of over 1,000 young people aware of the office.<sup>17</sup> It recommended that given the large number of complaints made by young people a team should be dedicated within the Ombudsman's Office to investigate and process with complaints by young people, something which has not happened in the interim.

In a review of the handling of complaints in the criminal justice system between November 2005 and October 2006 many of the young people in the Juvenile Justice Centre stated they wanted to complain about how they had been treated by the PSNI (in terms of the degree of

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<sup>13</sup> Equality Commission Northern Ireland (2010) 'Section 75 of the Northern Ireland Act – A Guide for Public Authorities' ECNI

<sup>14</sup> Approved 28<sup>th</sup> March 2012

<sup>15</sup> Chapter 4, Equality Scheme, Department of Justice for Northern Ireland, Approved 28<sup>th</sup> March 2012

<sup>16</sup> Police Ombudsman's Office Northern Ireland Annual Report 2010-11 Table 29

<sup>17</sup> Institute for Conflict Research (2003) *Young People and Politics in North Belfast: An outline of a survey by the North Belfast Community Research Project*. Belfast. Institute for Conflict Research.

restraint used and/or discriminatory attitudes and reactions) but did not because they considered they would not be believed.<sup>18</sup>

While not making a specific recommendation in relation to complaints, the Review commented that both the PSNI and the Police Ombudsman are concerned by their failure to reach young people and indicated that both bodies are working with partners to “raise awareness among young people of their respective roles and to include young people very directly in the decision-making process”.<sup>19</sup>

More recently research carried out by the Institute for Conflict Research found that young people had either never heard of the Police Ombudsman’s office or were reluctant to lodge an official complaint or didn’t know how to.<sup>20</sup>

Include Youth’s consultations with young people within the youth justice system through our Young Voices project revealed some level of awareness of the Police Ombudsman’s office, in that some of the young people were aware of its existence “yes-people complain to them about the police”, with that awareness being raised mostly by the PSNI themselves:

“I heard through the cop who harassed me. I kept complaining to the custody sergeant and he told me”

“I saw a sign for it in the police station”

The young people consulted also had some awareness of what the basis for a complaint might be

“like if they (police) beat you or wreck your house, you complain to them”,

“or if you get harassed”

“or if a cop smacks you”

While some degree of awareness of the Police Ombudsman’s office did exist what was striking in the consultations was its lack of relevance for the young people in considering the issue of complaints against the PSNI – all of them framed the issue of complaints as being solely between themselves and the PSNI, with no role for an outside, independent body such as the Ombudsman’s office; “the PSNI would just bin it (a complaint)”

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<sup>18</sup> Criminal Justice Inspectorate Northern Ireland and NICCY (2007) *The Handling of Complaints in the Criminal Justice System. A review of how the main Criminal Justice Organisations deal with complaints*, Belfast:

CJINI/NICCY page 12

<sup>19</sup> Ibid page 109

<sup>20</sup> Nelson et al(2010) *Beyond the Margins: Building Trust in Policing with Young People*: ICR

## Confidence in a police complaints system

Young people consulted by Include Youth<sup>21</sup> indicated that they had very little confidence generally in a complaints system in relation to the police, whether that was an internal complaints system within the PSNI or an independent system such as the Police Ombudsman's Office. They also expressed the view that once young people were known to the PSNI any complaint they made would not be taken seriously:

*"If you've offended they don't care if you're a victim."*

*"If you have a criminal record they are hardly going to take your word."*

*"Even if you don't have a record ... they (the PSNI) think they have the power."*

When questioned as to what would prevent them from making a complaint young people expressed a high degree of scepticism regarding the likelihood of such a complaint being effectively investigated:

*"cos they don't **do** anything, there's no point. You can complain all you want, but **nothing** happens"*

*"No, cos nothing's going to happen, they're (Police Ombudsman) not going to do anything – what are they going to do? If there's no evidence you can't do anything – the police always make sure you've no evidence to complain"*

*"you know that song 'I fought the law and the law won'? It's like that"*

*...there's no point complaining about the police, nothing happens"*

*"I didn't complain cos there's no point, cos the peelers get away with everything because they **are** the law – they do what they want, it's all corrupt"*

Young people also expressed fears that they would be victimised by the PSNI for making a complaint:

*"you don't complain because they'd just come down harder on you"*

*"they'd be on your back all the time, follow you around everywhere, harassing you, pushing you"*

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<sup>21</sup> Include Youth (2012) Young Voices consultation with young people in Woodlands Juvenile Justice Centre and Hydebank Young Offenders Centre

## **Recording and monitoring of complaints from children and young people**

The lack of collation and reporting on complaints by children and young people under 16 years of age has been repeatedly highlighted by a range of bodies and agencies including NGOs such as Include Youth<sup>22</sup>, the Children's Commissioner (NICCY)<sup>23</sup> and the independent Review of the Youth Justice System in Northern Ireland<sup>24</sup>. The lowest age bracket used for recording complaints is 16-24 years.<sup>25</sup>

Yet the first Police Ombudsman, Nuala O'Loan, acknowledged there was an over representation of complaints from children and young people.<sup>26</sup> **Given that this issue has been highlighted repeatedly and the Police Ombudsman's Office is fully aware of it Include Youth questions why it has not been addressed to date?**

**The failure of the office to address this is made all the more concerning given the obligations placed on the Police Ombudsman's office regarding disaggregated data collection under Section 75 of the Northern Ireland Act 1998. The Equality Commission Northern Ireland has recommended that complaints collated by the Police Ombudsman's Office are monitored across all Section 75 groups.<sup>27</sup>**

**Additionally, compliance with the UN Convention on the Rights of the Child also requires disaggregated data collection in relation to all aspects of children and young people's lives.<sup>28</sup>**

Other questions also arise in relation to the failure of the Police Ombudsman's office's to a capture age related discriminatory behaviour within its data collection systems. In its annual report 2010-11 the breakdown of allegations by type and sub-type covers a wide number of discriminatory grounds, including sectarian, gender, disability and homophobic based discriminatory behaviour but excludes the age ground.

**Include Youth questions why this is the case, given the equality obligations on the Police Ombudsman's office under Section 75?** We would hope that the office is not relying on the lack of a domestic legal framework covering age related discrimination in the provision of goods, facilities and services to justify such exclusion as Section 75 of the Northern Ireland Act plus Article 14 of the ECHR as incorporated by the Human Rights Act 1998 already impose legal duties in this regard.

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<sup>22</sup> Include Youth (2011) Include Youth submission to the Youth Justice Review Team's Review of the Youth Justice System in Northern Ireland

<sup>23</sup> Kilkelly, U. et al (2004) Children's Rights in Northern Ireland : NICCY and QUB

<sup>24</sup> Op cited at note 11

<sup>25</sup> Police Ombudsman Office Northern Ireland Annual Report 2010-11 Table 24 Age of Complainants

<sup>26</sup> Interview with Nuala O'Loan, Police Ombudsman for Northern Ireland cited in NICCY QUB Children's Rights in Northern Ireland 2004, op cited at note 7

<sup>27</sup> Equality Commission for Northern Ireland (2011) Response to the Department of Justice's consultation on the Report of the Review of the Youth Justice System in Northern Ireland Paragraph 13

<sup>28</sup> Op cited at note 6

**There is a further serious issue in relation to the recording of complaints from under 18s.**

The consultation document states that the Police Ombudsman's office investigates all complaints made about PSNI, from incivility to criminal conduct"<sup>29</sup>; however, this is effectively not the case in relation to children and young people under 18 years of age.

The Northern Ireland Policing Board had sought clarification from the Police Ombudsman's office as to the recording of complaints made by young people and whether the office had a protocol for engaging with people aged 18 and under.<sup>30</sup> In written correspondence from the Northern Ireland Policing Board to Include Youth<sup>31</sup> the Board reported that the Ombudsman's office had advised them that while it does not have a specific written protocol for engaging with young people aged 18 years or under "it *would be the expectation of the Office that persons aged under 18 years would be accompanied by an appropriate adults should they wish to record a complaint against the police*. It would not be normal practice of the Office to record complaints from juveniles in the absence of an appropriate adult".

Include Youth believes that such a practice is entirely without justification on the basis of either principle or practice. Article 12 of the United Nations Convention on the Rights of the Child, along with General Comment No 12<sup>32</sup> provide clear guidance to all public authorities regarding the rights of children and young people to have their voices heard, and deals comprehensively with the issue of evolving capacity. In law and practice children aged 10 can be held criminally liable and many young people have regular contact with the PSNI. Many young people are living independently between 16-17 years of age.

**We would urge the Department of Justice and the Police Ombudsman's office to ensure that this discriminatory practice is urgently addressed and amended.**

### **Local Resolution of Complaints Mechanism**

Include Youth is concerned at the potential of recent developments in relation to the introduction of a local resolution mechanism to deal with complaints against the police to further undermine the role of the Police Ombudsman's Office vis-a-vis children and young people. **In terms of an effective police complaints mechanism for children and young people the emphasis and priority must be given to resolving the failures of the Police Ombudsman's office to deliver in this regard.** A focus at this time on the further rolling out

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<sup>29</sup> Department of Justice Future Operation of the Office of the Police Ombudsman for Northern Ireland A consultation paper. March 2012 paragraph 2.10

<sup>30</sup> Minutes Northern Ireland Policing Board's Human Rights and Professional Standards Committee 11 January 2012

<sup>31</sup> Letter received by Ms. Koulla Yiasouma Director Include Youth from Mr. Peter Gillece, Director of Policy, Northern Ireland Policing Board, dated 19 April 2012

<sup>32</sup> UN Committee on the Rights of the Child (2009) General Comment No 9 on the Right of the Child to be Heard

of local complaints mechanism which would involve children and young people would be detrimental to resolving the serious issues that exist around the Police Ombudsman's Office functioning as an independent complaints mechanism.

In addition, given the negative perceptions and lack of confidence among young people as to the independence of the Police Ombudsman's Office itself it is difficult to envisage them placing their trust in a complaints resolution mechanism where complaints are dealt with directly by PSNI officers.

In our view the recommendation in relation to a local resolution mechanism contained in the independent Review of the Youth Justice System in Northern Ireland was most unhelpful, recommending as it did the introduction of legislative change in order to enable a by passing as it were of the Police Ombudsman's office. Among those to raise concerns regarding this recommendation were the Prisoner Ombudsman who noted that young people could be disadvantaged if the independent role (of the PONI) was removed.<sup>33</sup>

While noting that an initial assessment of the pilot phase of the local resolution mechanism had been positive, the Policing Board in its annual human rights report reserved its final judgement on the mechanism by stating that an assessment of "whether the process is a success and is an appropriate means of dealing with more minor complaints will depend upon the results of ongoing assessment"<sup>34</sup>

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<sup>33</sup> Prisoner Ombudsman for Northern Ireland (2011) Response to DOJ consultation on a review of the youth justice system in Northern Ireland

<sup>34</sup> Northern Ireland Policing Board Annual Report 2010-2011 page 44

## Response to Consultation Questions

### **Q3 Do you believe there needs to be a mechanism to appeal decisions of the Ombudsman? If so what form should it take?**

We believe that in the interests of natural justice and of restoring full confidence to the office of the Police Ombudsman that an appeals mechanism should be put in place. We do not have a view on what form that should take apart from to note that there should be clarity around it and that it should be fully accessible to children and young people.

### **Q4 Do you believe it would be right to restrict the applicants for the post of Police Ombudsman by precluding a policing background? If so, should that apply to Northern Ireland, to here and neighbouring jurisdictions or on a generic basis?**

Include Youth does not have a fixed view in relation to these related questions. Given the dangers associated with institutional bias however we would ask how it would be possible in a recruitment and appointment process to fully satisfy oneself of the total independence of any candidate with a policing background.

There are wider issues regarding the real and perceived independence of the Office overall, not just in relation to the Ombudsman. In its independent review of the Office of the Police Ombudsman for Northern Ireland the Committee on the Administration of Justice examined the issue of balance between police/civilian composition and recommended that there was a need to examine the current imbalance in the police/civilian composition at senior levels in the organisation in an effort to address perception of bias. CAJ drew attention to the fact that at the time of their research the Executive Board of the Police Ombudsman's Office was composed of three members, the Police Ombudsman and the Senior Director of Investigations both of whom come from a policing background, and the Chief Executive who is from a 'civilian background'.<sup>35</sup>

We agree with the observation in the consultation document that there is possibly a distinction to be drawn between the practical importance of the robustness and the independence of the investigative process and the symbolic and presentational significance of the independence of the decision maker.<sup>36</sup> This is particularly so for young people given their perceptions of and relationships with the PSNI as outlined earlier.

**We would support the recommendation from CAJ that there is a need to address the wider question of police-civilian imbalance within the Police Ombudsman's Office and would urge the Department of Justice to do so.**

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<sup>35</sup> Op cited at note 3

<sup>36</sup> Op cited at note 29, paragraph 5.8

**Q5 Should applicants be required to have certain previous experience relevant to adjudicating on complaints?**

As the consultation document notes the significant investigative role of the Ombudsman highlights the advantage of the post holder being a person with sufficient legal or professional training to be able to oversee, interpret and reach decisions on the case prepared by the investigators. **We are of the opinion that given their role it would be necessary to have some previous experience of adjudicating on complaints but agree with the observations in the consultation document that these skills can be demonstrated in a range of backgrounds.** Question 7 is closely related to this question so we have answered it next.

**Q7 Should the applicant be a senior judicial figure or person of the quality and experience of a senior judicial figure?**

We note that the Hayes report envisaged the post holder as a senior judicial figure **or person of the quality and experience of a senior judicial figure** (emphasis added). We do not believe that an essential criterion should be experience as a senior judicial figure and we would challenge the assertion in the consultation document that a judicial figure would be “likely to command the confidence of police and public alike”.<sup>37</sup> Young people’s experience of the judiciary is generally not overly positive and they report experiencing prejudice from judges on the basis of age and class. It is an overly simplistic and inaccurate assertion.

**Q6- Are there specific skills/competences/experiences an applicant for the post should have? If so, what are they?**

Include Youth believes that there is a need for specific skills, competences and experiences extends right across the entire organisation in order to equip it to address the near invisibility of children and young people within the Office.

First and foremost the Ombudsman and relevant staff must have the necessary knowledge of and commitment to the implementation of the relevant international children’s rights standards. This is in line with the Police Ombudsman’s obligations under Articles 4 (general measures of implementation) and Article 42 (awareness raising) of the UN Convention on the Rights of the Child, as well as with General Comment No 5 on General Measures of Implementation.

UN standards on children’s rights in juvenile justice also emphasise the necessity of training on children’s rights standards for all those involved in the administration of juvenile justice. During its most recent examination by the UN Committee on the Rights of the Child the UK government was reminded of its duties around “the reinforcement of adequate and systematic training of all professional groups working with and for children, in particular law

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<sup>37</sup> Ibid paragraph 5.5

enforcement officials, immigration officials, media, teachers, health professionals, social workers and personnel of child-care institutions”.<sup>38</sup>

Other skills and competences which the Office must possess within it, and which ideally the Ombudsman should possess, include an ability to communicate effectively and emphatically with children and young people as well as an understanding of the context of their lives.

It is also worth reiterating here that a demonstrable commitment to independence and impartiality is a sine qua non in a list of essential criteria in the person specification.

**Q8: Do you believe a corporation sole model is appropriate? If not, what change do you believe is needed?**

We believe that the focus of the consultation should be on how to ensure the effectiveness of the office, not on governance issues. In some ways we see the focus on the governance model as a distraction in that the Office had previously been working very effectively under the corporation sole model and was in fact regarded as a model of best practice vis-a-vis police oversight.<sup>39</sup> Furthermore the Department of Justice’s McCusker report concluded that while emphasising the need for clarity of roles that he was not however persuaded that governance per se is the key issue.<sup>40</sup> The corporation sole model is appropriate if a Police Ombudsman is appointed with the political will and expertise to do the job and Include Youth sees no compelling reason to change the present model.

**Q9 Do you favour retaining a separate Police Ombudsman or creating a Justice Ombudsman?**

Pursuant to the Patten Report, the PSNI and the civilian oversight mechanism provided by the Police Ombudsman’s office are vital parts of the new policing architecture and as such are of crucial importance to human rights compliance. Include Youth believes therefore that it is imperative that the Police Ombudsman’s office is maintained as an independent and effective police complaints mechanism. We do not see any basis for a merger of the office with other oversight bodies. **We are firmly in support of Option (i) retention of the status quo as set out in paragraph 7.4 of the consultation document.**

One of the other two options put forward in the consultation document is the consolidation of the Police Ombudsman with the Prisoner Ombudsman as the roles are similar. We disagree with this contention – there is a huge disparity between the roles of the two mechanisms. **We would advise strongly against any move to amalgamate the two offices.** Under the Hillsborough Castle Agreement there is a commitment to review the powers of

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<sup>38</sup> CRC/GBR/CO/4 paragraph 21

<sup>39</sup> Op cited at note 1 Conclusions page 26

<sup>40</sup> ibid

the Prisoner Ombudsman's office.<sup>41</sup> **Include Youth will be recommending that this office should be established on a statutory footing.**

**Q10- Is there merit, both in terms of efficiency and case progression, to having an Office of Justice Ombudsmen, where there is a separate Police and Prisoner Ombudsman, but there is co-location, shared services, and/or a pool of investigators?**

Include Youth recognises that there may indeed be arguments on efficiency grounds for co-location and shared services but would argue strongly that the threats to the perceived independence of the Police Ombudsman's Office in such a scenario greatly outweigh any efficiency savings. A somewhat cynical interpretation of such a proposal would be that it would result in the de facto creation of a Justice Ombudsman but by stealth – just a prospect must be guarded against. As stated earlier the establishment of the Police Ombudsman's Office was a key building block in the new start to policing post Patten and its total independence must be protected at all costs.

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<sup>41</sup> Hillsborough Castle Agreement (2010) Addendum to the Programme for Government paragraph 7

## Conclusions and Recommendations

1. The central underlying issue at stake in the consultation, the lack of confidence in the current system for investigation of complaints against the police, is of direct and major relevance to children and young people.
2. It is Include Youth's view, and a view that is shared by other children's rights organisations, that the Police Ombudsman's office has to date failed to function as an effective complaints mechanism for over a quarter of the population in Northern Ireland.
3. We believe that this consultation and the concomitant reform process presents a key opportunity for the Department of Justice and the Police Ombudsman's office to examine the reasons why the Office has not worked for children and young people and to take steps to ensure that this is urgently rectified.
4. We are encouraged by the appointment of the new Police Ombudsman, given his background in and understanding of the wider issues affecting children and young people in conflict with the law and believe that he possesses the skills, expertise and commitment to ensure that the ongoing reform process within the Ombudsman's office also addresses the serious issues raised in this response.
5. We request clarification as to whether the Department has screened its proposals for the future operation of the Office of the Police Ombudsman in Northern Ireland in compliance with Equality Commission's guidance and the Department of Justice's Equality Scheme. We have not been aware of any direct consultation with children and young people as required under the Equality Commission's guidance.
6. Awareness levels among children and young people of the Office and its functions are very low and contrast sharply with the levels of awareness among the general population.
7. Young people consulted by Include Youth indicated that they had very little confidence generally in a complaints system in relation to the police, whether that was an internal complaints system within the PSNI or an independent system such as the Police Ombudsman's Office.
8. Serious issues exist in relation to the Ombudsman's failure to record and monitor complaints from young people under 18. These include the Office's non acceptance of complaints from young people under 18 in their own right, the lack of disaggregated data for complaints from under 16 year olds and the failure to capture data within the Ombudsman's data collection mechanisms on allegations of discriminatory behaviour on the age ground.
9. In order to secure an effective police complaints mechanism for children and young people the emphasis and priority must be given to resolving the failures of the Police Ombudsman's office to deliver in this regard and the focus should not be shifted to the development of a local resolution mechanism.

10. There is now a need for an urgent and focused review into the operation of the Police Ombudsman's Office in relation to children and young people. In our view the Criminal Justice Inspection Northern Ireland would be the appropriate body to undertake this review, following on from its inspection into the independence of the Office of the Police Ombudsman for Northern Ireland.<sup>42</sup>
11. This review should lead to the development of an internal Strategy and time lined engagement and inclusion action plan within the Ombudsman's office to ensure that the Office is 'fit for purpose' as regards fulfilling its function as an independent and effective complaints mechanism for all children and young people.
12. The success or otherwise of any strategy and action plan that is devised will depend as much on the commitment to addressing the inclusion of a child rights perspective in all planning, management and communication processes within the organisation as it will on external facing awareness raising and engagement initiatives with children and young people. This commitment must emanate from the leadership level within the organisation. Elements of such an action plan could include:
  - a. Ensuring that all staff are trained on international children's rights standards and their application in legislation, policy and practice.
  - b. This initial training should be reinforced with regular refresher courses.
  - c. The employment of a dedicated outreach worker to raise awareness of the office among children and young people. The development of an outreach campaign which is targeted at all children and young people but which proactively engages those children and young people who are most vulnerable, including children who are in conflict with the law.
  - d. The production of a range of child friendly accessible materials.
  - e. Address the issues highlighted in this response in relation to recording and monitoring (summarised at point 8 above) through ensuring that the Office receives, records and monitors patterns of complaints from under 18s on an equal basis with adults and that all of the Section 75 requirements regarding disaggregated data collection are fully complied with.
13. We believe that in the interests of natural justice and of restoring full confidence to the office of the Police Ombudsman that an appeals mechanism should be put in place.
14. We would support the recommendation from CAJ that there is a need to address the wider question of police-civilian imbalance within the Police Ombudsman's Office and would urge the Department of Justice to do so.
15. We are of the opinion that given their role it would be necessary for the Police Ombudsman to have some previous experience of adjudicating on complaints but agree with the observations in the consultation document that these skills can be demonstrated in a range of backgrounds.

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<sup>42</sup> Op cited at note 2

16. We do not believe that an essential criterion for the selection and appointment of the Office of the Police Ombudsman should be experience as a senior judicial figure and we would challenge the assertion in the consultation document that a judicial figure would be “likely to command the confidence of police and public alike”, based on reported experience of age and class based prejudice by young people.
17. The specific skills, competences and experiences required, including a knowledge and understanding of international children’s rights standards and an ability to communicate with children and young people, must be in evidence right across the entire organisation and not just within the post of Police Ombudsman if it is going to address the almost invisibility of children and young people within the Office.
18. We believe that the focus of the consultation should be on how to ensure the effectiveness of the office, not on governance issues. The corporation sole model is appropriate if a Police Ombudsman is appointed with the political will and expertise to do the job and Include Youth sees no compelling reason to change the present model.
19. Include Youth believes therefore that it is imperative that the Police Ombudsman’s office is maintained as an independent and effective police complaints mechanism. We do not see any basis for a merger of the office with other oversight bodies.
20. We would advise strongly against any move to amalgamate the Office of the Police Ombudsman with the Prisoner Ombudsman.
21. Include Youth recognises that there may indeed be arguments on efficiency grounds for co-location and shared services but would argue strongly that the threats to the perceived independence of the Police Ombudsman’s Office in such a scenario greatly outweigh any efficiency savings.