

Guidelines for the Prosecution of Young People: Draft for Consultation

Summary of Consultation Responses

The Public Prosecution Service's consultation on its Guidelines for the Prosecution of Young People was issued on 7 February 2019 for a period of 12 weeks. The aim of the consultation was to seek a wide range of views to inform the development of the Guidelines.

A number of subsequent extensions were made to the closing date for the consultation in order to maximise stakeholders' opportunity to respond. The final closing date was **31 October 2019**.

Responses were received from:

Response	Page
Barnardo's N.I.	2
Children's Law Centre	12
Commissioner for Children and Young People	33
Department of Justice	49
Include Youth	51
Information Commissioner's Office	62
Law Society of Northern Ireland	63
NIACRO	68
Probation Board for Northern Ireland	75
Police Service for Northern Ireland	80
The Superintendent's Association of Northern Ireland	82
Youth Justice (Woodlands Juvenile Justice System)	83
Yvonne Adair (Independent)	89

All comments raised have were taken fully into consideration.

We have provided feedback to each consultee and a summary of the main points raised are set out below.

Barnardo's NI

Comment	PPS Response
<p>1. Decision to Prosecute</p> <p>1.1 Welcomes the commitment in 3.2.4 that “regard shall be had to all known relevant facts and circumstances of the young person’s environment”.</p> <p>1.2 Recommend that an ACEs aware, trauma-informed approach is adopted.</p> <p>1.3 Aware that some training had been made available to youth specialists, this should be rolled out across all those involved in youth cases and regularly reviewed and updated as part of a continuous learning programme.</p> <p>1.4 Recommend that where possible, a multi-agency approach or input to decision making is considered.</p> <p>1.5 Welcome the intention to make prosecution decisions “as expeditiously as possible”.</p>	<p>Noted – thank you.</p> <p>PPS staff are aware of ACEs and have received training in this regard. ACEs will be taken into account when taking decisions, where the information is available to the Prosecutor.</p> <p>All staff have received training on the best interests of the child principle. We will continue to identify and address training needs in this area on an ongoing basis.</p> <p>The Youth Prosecutors have quarterly meetings at which policy, operational and practical issues are discussed and additional training needs identified.</p> <p>Youth Prosecutors currently adopt a multi-agency approach to decision making, in that they take into account all information where made available to them by PSNI, Social Services, YJA, medical practitioners and any other relevant agency.</p> <p>Noted – thank you.</p>
<p>2. Youth Diversion</p> <p>2.1 We welcome the intention that prosecutors should give particular consideration to diversion in appropriate youth cases (4.1.3). We</p>	<p>PPS will divert in cases involving young people, where possible. PPS offer more chances of diversion where a child has bigger obstacles to overcome in their life. As</p>

<p>urge that a trauma-informed approach is taken to this decision-making process and an appropriate diversion that addresses underlying issues is identified.</p> <p>2.2 We are concerned, however, that many of the diversionary disposals listed in section 4 attract a criminal record. The impact of this has the potential to be long-lasting and cause damage to the young person’s life outcomes: limiting their education, travel and career opportunities due to potential disclosure, as well as risking further offending behaviour. As the Youth Justice Review (2011) states, “contact with the [youth justice] system actually outweighs any deterrent effect it may have” (p79). We believe that where possible diversionary measures should not attract a formal criminal record and that children are in a position to make an informed choice when accepting a diversionary disposal, with the consequences of that disposal fully explained to them.</p> <p>2.3 If a diversionary disposal is deemed appropriate – and we urge they are considered for the vast majority of youth cases – then it is important that the consequences are fully explained to the young person in accessible and age-appropriate language.</p>	<p>outlined above, Youth Prosecutors will take into account all information made available to them by PSNI, Social Services, YJA, medical practitioners and any other relevant agency.</p> <p>The maintenance of criminal records is a matter for the Department of Justice and the Northern Ireland Assembly.</p> <p>PPS recognise the importance of the young person making an informed choice in relation to diversionary disposals. We are currently revising our diversionary correspondence to ensure the recipient is fully aware/informed of the consequences of accepting a diversionary disposal and their right to independent legal advice.</p> <p>Furthermore PSNI caution and Youth Engagement documentation now advises of the consequences of accepting diversionary disposals and also of the right to obtain independent legal advice.</p>
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2.4 We also recommend that the suite of diversions includes effective options that do not attract a criminal record, therefore more effectively diverting the young person from the criminal justice system and the associated impact of a criminal record. Whilst we acknowledge this matter is beyond the scope of these Guidelines, we wish to highlight this discrepancy.

2.5 We welcome that the draft Guidelines provide some examples of factors to consider in relation to diversion (4.4.3). It is important that this is accompanied by robust training to prevent this becoming a ‘check list’: the key aspect for decision makers to consider is the unique context for every child. Similarly, whilst we welcome the acknowledgement of ACEs as a consideration, it is important to consider how these experiences will be accurately identified and communicated, and how the context of an ACE has an impact on the effect on the child. Further, the example factors provided in 4.4.4 should also not be thought of as exhaustive, and each individual context will provide different considerations: for example, basing the decision to prosecute on “the young person has previously been diverted but has not fulfilled the requirements of the disposal” ignores the potential that the very reason a diversionary disposal was originally identified (e.g. because of the child’s circumstances) acted as a barrier to the young person fulfilling the requirements of the disposal. In such a scenario, the decision to prosecute

Please see above.

All prosecutors are aware of the sensitivities involved in taking decisions involving young people. Training on the best interests of the child principle and ACEs has been delivered to all prosecutors. Further training will be provided as and when training needs are identified.

Youth Prosecutors recognise that each case involving a young person is different and each case is therefore assessed and dealt with on its own merits.

Youth Prosecutors will consider all information available to them when taking a decision involving a young person. In the event that further information comes to light at a later stage, the file can be reviewed.

The list of factors referred in the guidelines are simply examples and are only intended to be a guide. It is specifically stated in the document that the list is not exhaustive.

<p>could therefore exacerbate a situation previously identified by the PPS, and miss an important opportunity to enable early stage intervention, and prevent the escalation of offending behaviour, whilst still addressing the harm caused by the offence.</p>	
<p>3. Looked After Children and Offending Within Children’s Homes</p> <p>3.1 We welcome that the draft Guidelines recognise the unique situation of children in or leaving care. The Youth Justice Review (2011) highlights how “there is an over-representation of looked after children, particularly those in residential care, entering the justice system” (p78).</p> <p>In light of this, we welcome that the draft Guidelines propose that “a criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history” (5.2.5). By virtue of the fact that the child is within the care system, an ACEs-aware and trauma-informed approach should be taken when considering cases involving children in care.</p> <p>3.2 As highlighted in our submission on the PPS Youth Justice Policy Development (2017), we strongly advocate the use of restorative practice to address offending behaviour in children’s homes wherever possible. Residential staff are in a privileged but challenging</p>	<p>Noted – thank you.</p> <p>Noted – thank you.</p>

role when working directly with children and young people, and relationship breakdowns often lead to increased negative behaviours being exhibited. Restorative practice is an alternative approach to behaviour and relationship management. It is primarily influenced by Social Learning Theory which focuses on learning that can occur within any social context where positive behaviours can be modelled, based on the belief that people learn best by observing the behaviours modelled by others.

3.3 Barnardo's NI previously provided a Restorative Practice Service to 26 care facilities across NI, including six houses in the Juvenile Justice Centre. This service delivered bespoke training to teams and individuals to equip them with the skills and knowledge to deliver a restorative practice approach within the care setting, and also provided ongoing support to the homes to advise on restorative meetings. The service could also be called in to resolve conflict between young people, or between a young person and carer, in order to prevent escalation of the issue and referral to the police; there was also occasional joint-working between care home staff and PSNI to allow for issues to be addressed without criminalisation. The Restorative Practice approach was effective, as it listened to the victim's needs while also providing the young person with a means to work through their feelings without resorting to violence, therefore

Noted. PPS will divert young people from the Criminal Justice System where it is appropriate to do so.

<p>preventing the repetition of such behaviour and addressing the underlying causes.</p> <p>Our understanding is that while restorative practice approaches are still used across residential settings in Northern Ireland, its use and development has dwindled since our training and support service ended. We believe the full potential and long term benefits of restorative practice in reducing the number of children in care entering the justice system are yet to be realised. However with greater investment and support, the already established restorative systems could be developed to support better outcomes for children in care and address their over-representation in the youth justice system by preventing the need for prosecution through effective restorative practice. We urge that the PPS work with colleagues across the sector to effectively divert young people who are in care away from the criminal justice system by building on such examples of best practice.</p>	<p>Paragraph 5.2.4 has been amended to recognise the potential for restorative approaches within the children’s home setting:</p> <p><i>Disposals such as restorative cautions or youth conferencing may be sufficient to satisfy the public interest and to reduce the risk of future offending. Informal responses, such as disciplinary measures and / or restorative practices applied within the home, may also be sufficient to satisfy the public interest.</i></p>
<p>4. Mental Health and Learning Disabilities in Young People who offend</p> <p>4.1 We welcome the recognition of the impact of mental health factors within the draft Guidelines. We recommend that clarity is provided on the three distinct (but not mutually exclusive) definitions of mental illness, mental wellbeing, and learning disability.</p>	<p>The definitions included in the policy have been taken directly from the Mental Health (NI) Order 1986.</p> <p>The mental health chapter of this policy will be reviewed and amended as necessary following the introduction of Part 10 of the Mental Capacity Act 2016 and any</p>

<p>4.2 It is right that the PPS considers mental capacity when considering prosecution. Given the suspected high number of undiagnosed mental health or learning disability conditions, and the length of time it can take to access support, it is important that there are appropriate opportunities for multi-agency input into the PPS decision making process, e.g. social worker, family, or education engagement, to ensure a full picture of the young person's needs is provided. In addition, ongoing training for prosecutors on the identification and effect of various mental health conditions should be made available.</p> <p>4.3 In cases where mental health needs are considered a contributing factor, prosecutors should consider whether a criminal justice response is likely to be effective or if it is likely to risk further escalation of the behaviour, thereby missing an opportunity for effective early stage intervention. Multi-agency working could help address these concerns.</p>	<p>subsequent development of a PPS policy in this area.</p> <p>Youth Prosecutors take into account all available information on file at the time of decision, they are however reliant upon such information being brought to their attention.</p> <p>Mental Health training, outlining the effect of various mental health conditions, has been provided to prosecutors by Mindwise. The PPS will continue to identify and address training needs in this area.</p> <p>Youth Prosecutors are sensitive to the mental health difficulties of young people. Where this has been raised as an issue, the information will be taken into account by the prosecutor and reflected in the decision taken.</p> <p>In the event that information regarding a young person's mental health comes to light after the decision has been taken, the decision can be reviewed and amended as necessary.</p> <p>In cases involving young people where there are clear mental health difficulties, prosecutors may decide not to prosecute but can keep the young person in the system, using the Youth Engagement Clinics as a mechanism to ensure they can access the help and support they need.</p>
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5. Sexual Offences Committed by Young Offenders

Through our service delivery experiences, we understand the impact of sexual offences and strongly advocate the need to support and listen to young people who have been victims of sexual offences.

5.1 We welcome that the draft Guidelines provide a specific section on this type of offence. We recommend that in further developing these Guidelines, the PPS engages with the Review led by Sir John Gillen into the law and procedures in serious sexual offences in Northern Ireland, as well as the ongoing Review of the Law on Child Sexual Exploitation by the Department of Justice.

5.2 We recommend that, in addition to the training in relation to ACEs and trauma referenced in the draft Guidelines, that youth prosecutors and all others working in this area receive ongoing, up-to-date training to ensure they have a robust understanding of relevant issues – many of which are highlighted in the preliminary report of the Gillen Review – such as consent, as well as recognition of child sexual exploitation and coercive behaviours.

In terms of sexual offences by young people, we believe that children who display harmful sexual behaviour should be treated as children first and foremost. We know that children who sexually abuse other children have

PPS is currently in the process of implementing the recommendations arising from the Gillen Review, in partnership with the Department of Justice, PSNI and others. Any changes in the PPS approach to sexual offences as a result of the Review will also be reflected in these guidelines.

All prosecutors involved in taking decisions relating to children have received training on the issue of consent. Mental health, ACEs, Resilience and Youth Conference training has also been provided.

Training is reviewed on a regular basis and is provided as and when a need is identified. Training in respect of sexual offences will be reviewed as part of the Service's response to the Gillen Review and related policy development.

The Service recognises the potential impact of trauma and Adverse Childhood Experiences on the development of this offending behaviour. Young people who offend may themselves have been victims of abuse.

often already suffered abuse and trauma too. There is a clear need to develop greater understanding of why children offend in this way, including greater recognition of the impact of trauma and adverse childhood experiences on the development of this behaviour; similarly, more research is needed to understand and address the role of online harm in these behaviours. We believe that prevention, via effective early intervention, based on understanding the motivators and causes is an effective approach. In recent years, a report entitled 'Now I know it was wrong: Report of the parliamentary inquiry into support and sanctions for children who display harmful sexual behaviour' (2016), chaired by Nusrat Ghani MP and supported by Barnardo's, emphasised the role of early intervention and prevention, including working with schools and the voluntary sector to improve support for parents in keeping their children safe, restrict access to inappropriate online content, and increase young people's understanding of safe and healthy relationships. The report stated that although in serious cases a criminal justice response may be appropriate, "all children in this situation must receive the high-quality therapeutic support they need to address the underlying causes of their behaviour, prevent them from causing further harm to themselves or others, and enable them to achieve positive outcomes in adulthood" (p6).

<p>5.3 With regards to self-images and ‘sexting’, in our response to the Department of Justice’s Review of the Law on Child Sexual Exploitation (2019), we welcomed the intention of the law in protecting children from exploitation, however we also raised concerns that PPS decisions for non-court diversions could still result in a permanent criminal record being made, particularly where it is a case of a self-image, thereby criminalising the person with a disclosable offence. We therefore recommend that Prosecution Guidelines flag these cases as safeguarding concerns and direct young people to early intervention services, rather than criminal justice, avoiding the creation of a criminal record.</p>	<p>Youth Prosecutors tend not to prosecute or divert young people for the offences referred to at 5.3 as they are keen to avoid the criminalisation of young people in such situations.</p>
<p>Conclusion</p> <p>Barnardo’s NI welcomes the opportunity to respond to this consultation on the draft Guidelines for the Prosecution of Young Offenders. We would be happy to engage further with the Public Prosecution Service as it seeks to further develop and implement these Guidelines.</p>	<p>Further engagement is welcomed.</p> <p>Thank you for your response.</p>

Children's Law Centre

Comments	PPS Response
<p>1. Young Offending</p> <p>1.1 Children and young people are more likely to come into contact with the criminal justice system if they lack positive relationships with adults, lack family and community support, if they live in poverty or have unstable home lives. There is a clear need for services to focus on the provision of adequate family support services within the community to prevent young people from offending, thus keeping children and young people out of the criminal justice system in the first instance. This is vitally important given the recidivism rates once a young person enters the system and the damage that contact with the criminal justice system has for those children and young people who come into contact with it.</p>	<p>The forms of early intervention referred to are not within the remit of the PPS.</p>
<p>2. PPS Handling of Youth Cases</p> <p>2.1 This policy states that it will have the best interests of the child at its core. Given the importance of the best interests of the child every effort should be made to provide guidance to PPS staff as to what amounts to best interests. Best interests will vary from person to person and the PPS should adopt a definition of best interests that is compliant with the UNCRC, specifically:</p> <p>Article 3.1 - In all actions concerning children, whether undertaken by public or private social welfare institutions,</p>	<p>PPS have adopted the best interests of the child principle and it is widely understood and considered by all prosecutors taking decisions in cases involving young people.</p> <p>Prosecutors will also consider the welfare of the child and whether a prosecution is likely to have an adverse impact on the child's future prospects that is disproportionate to the seriousness of the offending.</p> <p>Whilst the best interests of the child is a primary consideration of the PPS, this has to be balanced with the primary aim of the youth</p>

<p>courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.</p> <p>2.2 The Committee recommended that the State party:</p> <p>(a) Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programs and projects that are relevant to and have an impact on children;</p> <p>(b) Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.</p> <p>2.3 The Children's Law Centre wishes to see a system in operation in Northern Ireland where access to the court is granted to all children and young people. Many children coming into contact with the criminal justice system do not have sufficient understanding of their rights or of the use of remedies to protect these rights, either due to the low minimum age of criminal responsibility, literacy or language problems, special educational needs or learning disability.</p>	<p>justice system, which is to protect the public and prevent re-offending.</p> <p>Please see above.</p> <p>Arranging access to the court for children and young people who are alleged to have committed offences is not within the remit of the PPS, but is rather a matter for the Department of Justice.</p> <p>Young people are entitled to independent legal advice in relation to the protection of their rights.</p>
<p>3. Youth Diversion</p> <p>3.1 CLC is extremely supportive of children being diverted away from the formal criminal justice system as we see diversion as a positive response to youth crime which avoids the formal</p>	<p>PPS must work within the diversionary framework available.</p>

<p>retribution of the criminal justice system. However the operation of diversionary measures at present do not place enough emphasis on diversion out of the formal criminal justice system where this is possible. Rather than diverting young people away from the criminal justice system, diversion tends to divert them away from one part of the criminal justice system into another part of the system.</p> <p>3.2 CLC would be supportive of a shift in focus from diversion as it is outlined in the current guidelines to the concept of diversion away from and out of criminal justice system.</p> <p>3.3 Concerned that access to some diversionary and restorative approaches can only be gained through the admission of guilt and / or the informed consent of the child. The Beijing Rules state that:</p> <p><i>“11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.”</i></p> <p>The Commentary on Rule 11.3 in the Beijing Rules states that: “Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition</p>	<p>PPS seeks to divert all children away from the formal criminal justice system, where it is appropriate to do so.</p> <p>Where no formal proceedings are directed, there is also an option within the Youth Engagement system to offer help and support to young people on a voluntary basis outside of the conventional criminal justice system.</p> <p>This is primarily a matter for the Department of Justice.</p> <p>PPS is currently reviewing their correspondence to ensure informed choices are made by the young person, as guided by their appropriate adult and legal representative, in relation to the acceptance of diversionary disposals.</p>
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of Forced Labour Convention.)
However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application".

To ensure access to some diversionary and restorative approaches the child must give their informed consent or admit guilt. We have serious concerns about a child's involvement in such schemes for the reasons expressed in the above commentary on rule 11.3 of the Beijing Rules.

3.4 Informed consent is an essential element of participation in proceedings under Article 12 of the UNCRC and the child's right to a fair trial. Issues of capacity in relation to informed consent within the criminal justice system are evidenced by research into the detention and questioning of young persons by the police in Northern Ireland, which found that many young people had great difficulty understanding the cautions delivered

Police advise the defendant of their right to legal representation for the purposes of caution administration. It is the choice of the individual as to whether or not they access this right. Prior to the administration of a caution, a declaration is either read to the defendant by the police officer or alternatively, the declaration is given to the young person to read. The declaration outlines the implications of accepting the caution. The young person then signs the declaration and in doing so confirms that they

<p>under the <i>Criminal Evidence (Northern Ireland) Order 1988</i>.</p> <p>3.5 Diversionary approaches which are only accessible to children and young people following the admission of guilt must be amended to ensure compliance with international human rights standards including taking into account the commentary on rule 11.3 of the Beijing Rules with regard to the requirement to give informed consent and / or admit guilt so that young people do not consent or admit guilt out of desperation to avoid the more formal side of the criminal justice system.</p>	<p>understand the meaning of the caution and the consequences of acceptance.</p> <p>Police now have a standard form which is completed at all Youth Engagement Clinics which evidences whether legal advice was obtained or whether legal advice was recommended, but declined. Police are monitoring this situation closely as information suggests that whilst legal advice is recommended and available, it is not being accessed for the purposes of caution administration.</p> <p>PPS are also reviewing their diversionary correspondence to ensure that it clearly sets out the implications of accepting a diversionary disposal.</p> <p>Youth Justice Agency workers, PSNI Youth Diversion Officers, Defence solicitors and appropriate adults all have a role to play in helping young people to understand the consequences of accepting cautions/diversionary disposals.</p> <p>Amending the range of available diversionary disposals is beyond the remit of the PPS. This is a matter for the Department of Justice.</p>
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<p>3.6 We would ask that the guidelines be amended so that to state that children and young people must always receive independent legal advice before accepting a diversionary measure and must be made aware that accepting a diversion can lead to a criminal record that can be disclosed later in life when a child or young person is seeking education, employment or training.</p>	<p>Whilst the PPS can make young people aware of the possibility of accessing independent legal advice, the organisation cannot stipulate that a young person “must” obtain legal advice and representation.</p> <p>The policy has been amended and a reference to legal advice can be found at section 1.6 of the document.</p>
<p>4. Decision to Prosecute</p> <p>4.1 There is an apparent lack of transparency in relation to PPS decision making. This applies equally to children as to adults. It is often the case that families and/or victims do not understand the reasons for a decision not to prosecute.</p> <p>There are also considerable delays in processing cases through the system which impacts negatively upon children and young people who are both victims and those facing prosecution. Whilst there is ongoing work on the part of the criminal justice system regarding delay including in respect of delay in cases involving children there is still significant improvements to be made within the system.</p>	<p>Not accepted.</p> <p>PPS decision-making guidelines are published and can be accessed in the PPS Code for Prosecutors.</p> <p>The giving of reasons to victims for not prosecuting is an important and sometimes complex issue</p> <p>As outlined at page 28 of the Code for Prosecutors, it is the policy of the PPS to give victims reasons in all cases where a decision is made not to prosecute. A two tier approach applies: In a wide range of cases which might be classed as more serious, either due to the nature of the offence or the vulnerability of the victim, detailed reasons will automatically be given for the decision not to prosecute and a meeting offered. Where detailed reasons are given the PPS will consider what information about the decision may be provided to the victim, balancing the interests of all parties together with any other considerations which seem material to the particular facts and circumstances of the case.</p> <p>In all other cases reasons are given in general terms.</p>

	<p>All victims are entitled to receive more detailed reasons for the decision taken and will be advised of that entitlement when general reasons are provided. All victims will also be informed of their right to seek a review when notified of the decision not to prosecute whether they receive detailed or general reasons. It may be that the provision of detailed reasons will assist a victim deciding whether they wish to pursue a review</p> <p>Decisions in cases involving young people are taken expeditiously. There is also a protocol between PSNI and PPS in relation to dealing with such cases. It should be noted that indictable cases involving young people are, by their very nature, more complex and can therefore take longer to process.</p> <p>It is accepted, however, that there are delays within the criminal justice system and the PPS is working closely with partner agencies to address the issue.</p>
<p>5. Looked After Children</p> <p>5.1 CLC is extremely concerned with the number of Looked After Children who enter the criminal justice system. There must be a multi-agency commitment to end the criminalisation of Looked After Children. There is a need to address the over-representation of LAC in the Juvenile Justice system.</p> <p>5.2 Health and Social Care Trusts have a “zero tolerance” policy; this has led to PSNI being brought into matters which would not warrant contact if the child lived within a family setting. There is a continued over</p>	<p>PPS agree that there are a disproportionate number of children with experience of care in the CJS and are live to the relevant issues. Any systemic change of the Criminal Justice System would, however, be a matter for the Department of Justice.</p> <p>As an organisation, PPS are aware of the issues referred to at 5.2. Minor offences in care homes are rarely prosecuted.</p>

<p>representation of LAC within Woodlands Juvenile Justice Centre.</p>	
<p>6. Mental Health and Learning Disabilities in Young People Who Offend</p> <p>6.1 From CLC’s case work it has become apparent that young people with learning disabilities are interviewed for offences for which they can never have the mens rea. This should be considered and guidelines drawn up when files are prepared by the PSNI for prosecution decisions by the PPS.</p> <p>6.2 Given the broad range of young people affected by co-occurring conditions it is essential that prosecutors are aware of, and trained in, the interpretation of statements made by these young people to PSNI, in interviews and when interpreting witness statements around behaviour. E.g. autistic children may stim (the repetitive movement of parts of their body, repeating of phrases or making certain sounds) which can be misinterpreted by those who do not understand the condition. Prosecutors must exercise caution when authorising a diversionary measure for such young people, admissions made to police must be viewed within the prism of a young person’s mental illness or learning disability. E.g. a young person suffering from echolalia will automatically repeat the vocalizations of another person and these can sound like admissions in a police</p>	<p>A Service Level Agreement between the PPS and PSNI is in the early stages of development. This will outline the information required by the PPS where mental health issues / learning disabilities are evident.</p> <p>Youth Prosecutors are sensitive to the various issues experienced by young people and will take into account any difficulties in this regard at the decision stage where the information has been made available to them.</p> <p>Mental health training has been provided to prosecutors by Mindwise and the PPS will continue to identify and address training needs in this area on an ongoing basis.</p> <p>In cases involving young people with mental health difficulties, prosecutors may decide not to prosecute or divert but can keep the young person in the system using the Youth Engagement Clinics as a mechanism to ensure they can access the help and support they need.</p>

<p>interview rather than mere repetition of the question being asked.</p> <p>6.3 When a prosecutor is considering a file prepared in relation to a young person with mental health or learning disability needs the file should contain, and if it does not the prosecutor should ask for, reports from Social Services, any psychologists/psychiatrists or other professionals that the young person is engaging with to establish the extent of the mental illness or the developmental stage of the young person.</p> <p>6.4 These guidelines must take account of the emerging law. The Mental Capacity Act (NI) 2016 has received Royal Assent but awaits a commencement date and significantly alters the way in which capacity is assessed in those over the age of 16. The Act creates a substitute decision making mechanism for those over 16, under 16s are excluded from the scope of the Act as it is believed by both the Department of Health and the Department of Justice that you cannot assess the capacity of a young person under the age of 16.</p> <p>6.5 Given the paradox that is presented regarding the minimum age of criminal responsibility and the statutory presumption of capacity only in those over the age of 16 in the Mental Capacity Act (NI) 2016 there is an obvious challenge for the PPS in making prosecution decisions in relation to those children and young</p>	<p>Prosecutors will consider all information available to them when taking decisions. Generally they will only be aware of a young person's difficulties if the relevant information is brought to their attention. In the event that further information comes to light at a later stage, that information will always be considered and the position reviewed. Where there are clear evidential gaps, Youth Prosecutors will normally take steps to acquire the relevant information by issuing a 'Decision Information Request' (DIR) to police.</p> <p>The Service's policies and guidance will be amended to reflect the relevant legislative changes upon commencement of Part 10 of the Mental Capacity Act.</p> <p>At present there is no timetable for the implementation of Part 10 of the Act (Criminal Justice). PPS will seek clarification on this point prior to commencement.</p>
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<p>people over the age of 10 but under the age of 16 with mental health difficulties or learning disabilities. The Act further creates a new suite of disposals, which will only be available in circumstances involving a person over the age of 16 who lacks capacity and the PPS must include these within their guidelines.</p>	
<p>7. Sexual offences committed by Young Offenders</p> <p>Whilst recognising that under age sexual activity can give rise to child protection concerns and the need for agencies to provide information, support, counselling and guidance for the young people concerned, we are of the view that it is not in the public interest, nor is it in compliance with international children’s rights standards, to prosecute and criminalise all children and young people who become involved in consensual sexual activity with another child or young person of similar age and understanding and that such prosecutions could discourage these young people from seeking appropriate information, help and advice. Such matters should form part of the consideration of the public interest test. The law does, however, need to protect children and young people under 16 from sexual activity involving someone under 18 in situations where there is evidence of abuse, coercion, inducement or threats. Any case involving a young victim of such offences should be dealt with quickly by the criminal justice system.</p>	<p>Accepted.</p> <p>Prosecutors are keenly aware of these issues and tend not to prosecute young people aged 13-16 who are involved in consensual sexual activity amongst their peers.</p> <p>The factors referred to are taken into account as part of the Public Interest Test.</p>

<p>8. School Bullying and Cyber-Bullying</p> <p>Through CLC’s case work, we are aware of cases where children face suspensions from school pending the outcome of criminal investigations. Guidelines for schools indicate that children cannot be excluded for more than 45 days, therefore if the criminal investigation takes longer, there can be difficulties for schools in relation to balancing the rights of the child who has been excluded from school and the rights of the child who may be the victim.</p>	<p>The PPS do not have any control over the length of police investigations, which are a matter for the PSNI. As outlined above, there are protocols in place between PSNI and PPS regarding decision time frames, and all efforts are made to ensure that PPS decisions are taken within those time frames.</p>
<p>9. Human Rights/Children’s Rights Considerations</p> <p>The United Nations Committee on the Rights of the Child published their concluding observations and recommendations in July 2016.</p> <p>Those most relevant to youth justice are as follows:</p> <p><i>With reference to its general comment No. 10 (2007) on children’s rights in juvenile justice, the Committee recommends the State party to bring its juvenile justice system, including in all devolved administrations, the overseas territories and the Crown dependencies, fully into line with the Convention and other relevant standards. In particular, the Committee recommends that the State party:</i></p> <ul style="list-style-type: none"> - <i>Raise the minimum age of criminal responsibility in</i> 	<p>Raising the age of criminal responsibility would require legislative change and is thus, not within the remit of the PPS.</p>

<p><i>accordance with acceptable international standards;</i></p> <ul style="list-style-type: none"> - <i>Ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18 years, and that diversion measures do not appear in children's criminal records;</i> - <i>Abolish the mandatory imposition of life imprisonment for children for offences committed while they are under the age of 18;</i> - <i>Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children;</i> - <i>Ensure that child detainees are separated from adults in all detention settings;</i> - <i>Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities.</i> 	<p>The vast majority of young people are dealt with in the youth justice system. If, however there is an adult co-accused, they will be dealt with together in the adult Magistrates' Court. In this particular situation, however, the young person will revert to the Youth Court for sentence. The most serious cases (e.g. murder, rape, manslaughter) are dealt with in the Crown Court.</p> <p>The abolition of life imprisonment, as a legislative / sentencing issue, is not within the remit of the PPS.</p> <p>Sentencing is a matter for the youth panel and is not something that the PPS can influence. Legislative change cannot be effected by the PPS.</p> <p>Child detainees are separated from adults in detention setting insofar as is possible. However the monitoring and oversight of such issues is not within the remit of the PPS.</p> <p>Please see above.</p>
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<ul style="list-style-type: none"> - The UN Convention on the Rights of the Child provides important safeguards for children within the court system. These include: <ul style="list-style-type: none"> • Article 3.1 - In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; • Article 12.1 - States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child; and • Article 12.2 - For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly, or through a representative or an appropriate. 	<p>The content of the Articles of the UN Convention on the Rights of the Child as cited are noted and accepted.</p>
<p>10. Section 75 of the Northern Ireland Act 1998</p> <p>Children and young people are amongst the most vulnerable groups in our society and they are not a homogenous group. Most will fall into a number of the section 75</p>	<p>Not accepted.</p> <p>The Guidelines have been screened and that outcome was published upon the release of this consultation. Therefore an Equality</p>

<p>categories as children and young people have multiple identities which should afford them extra protection under section 75. The effective operation of section 75 has the potential to deliver extremely positive outcomes for children and young people in Northern Ireland where adequate consideration is given to the needs and experiences of young people across all of the categories to which they belong. This is what is required by the statutory equality obligations under section 75 of the Northern Ireland Act 1998.</p> <p>Whilst CLC appreciate that it is the intention of the PPS in taking forward this policy that it should have a positive impact we have some comments regarding the PPS's duties under Section 75 of the Northern Ireland Act 1998.</p> <p>Section 75 of the Northern Ireland Act 1998 applies to the 'policies' of designated public authorities. Under Schedule 9 of the Northern Ireland Act 1998, designated public authorities such as the PPS are required to submit an equality scheme to the Equality Commission for approval. An equality scheme is a statement of the public authority's commitment to fulfilling its section 75 statutory duties and should include a commitment to assess and consult on the likely impact of policies on the promotion of equality of opportunity. To properly identify adverse impacts on the promotion of equality of opportunity and address them, including by identifying areas where it is possible to further promote equality</p>	<p>Impact Assessment has not been deemed to be necessary.</p> <p>Although an EQIA has not been pursued, direct consultation has taken place with schools, clinical professionals with care of vulnerable young people and representative organisations.</p>
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of opportunity as is required by section 75, or through mitigation of the adverse impacts and the adoption of alternative policies, it is necessary in the first instance to screen the policy. Where the potential for adverse impact or opportunities to further promote the enjoyment of equality of opportunity is identified, it is then necessary for public authorities to carry out a comprehensive Equality Impact Assessment (EQIA) on the policy proposals in line with its statutory duty and the commitments contained in its approved Equality Scheme. The term 'policies' covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland. This definition is intentionally very wide and in practice "policy" has tended to cover most, if not all work undertaken by designated public authorities. The Guidelines for the Prosecution of Young Offenders falls within the Equality Commission's definition of a policy for the purposes of section 75 of the Northern Ireland Act 1998.

In order to assess the impact of a new policy or a change to an existing policy on the promotion of equality of opportunity among the nine section 75 categories, public authorities must firstly screen the policy to determine whether there is potential for adverse impact on any members of the nine groups and where necessary an EQIA should be carried out. This policy has not yet been screened for equality implications. The Guidelines for the Prosecution of Young

Offenders has the potential for significant adverse impact on the enjoyment of equality of opportunity of children and young people and consequently this policy must be subject to screening and EQIA, including carrying out direct consultation with children and young people as one of the groups group most likely to be impacted upon in line with the statutory equality obligations under section 75 of the Northern Ireland Act 1998. There is also a duty on the PPS as a designated public authority to take the views expressed through consultation into account in finalising a policy.

The Guidelines for the Prosecution of Young Offenders will have impacts upon children and young people. The Equality Commission's Guidance for Public Authorities on Implementing Section 75 of the Northern Ireland Act 1998 is very clear that the section 75 statutory duties should be discharged by public authorities at the earliest opportunity in the policy development process, as part of the policy development process, rather than as an afterthought when the policy has been established. Equality considerations should be central to policy development and should be mainstreamed into all stages of policy making. The Commission is also clear that consultation with affected individuals and representative groups should begin as early as possible. The Equality Commission warns that

in relation to assessment via screening that:

“Screening is more useful if it is introduced at an early stage when developing or reviewing a policy, or during successive stages of implementation (e.g. strategic review, options paper). To undertake screening after policy proposals have been developed may be inefficient in terms of time and may be ineffective if policy makers are reticent to make changes at a later stage. It may also duplicate policy development processes.”

CLC is concerned that the PPS has not correctly discharged its obligations under section 75. It is vital that the direct involvement of children and young people is facilitated as part of this consultation process. These proposals will undoubtedly directly affect children and young people and so children and young people must be directly consulted with in relation to them. Such consultation is essential in ensuring compliance with section 75 of the Northern Ireland Act 1998 and also in ensuring the Government’s compliance with Article 12 of the UNCRC, which provides all children with the right to express their views freely in relation to all matters that affect them, with those views then being given due weight.

The PPS must consider the accessibility and format of every method of consultation it uses in order to remove barriers to the

<p>consultation process. Specific consideration must be given as to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities. The PPS must take account of existing and developing good practice, including the Equality Commission's guidance "Let's Talk Let's Listen". CLC wishes to see the PPS discharge its statutory duties by undertaking a comprehensive programme of direct consultation with children and young people in order to ensure that their views are heard and taken into account in the development of this policy. Failure on the part of the PPS constitutes a breach of its Equality Scheme.</p> <p>Part of ensuring compliance with the obligations under section 75 of the Northern Ireland Act 1998 is the collection of data for the purposes of the promotion of equality of opportunity. Data in relation to children and young people in a screening document must have regard to levels of physical ill health, mental ill health and/or learning disability, disaggregated by age and section 75 category. CLC believes that without such data it is impossible to ensure the promotion of equality of opportunity within the development of any policy and also to ensure compliance with section 75 of the Northern Ireland Act 1998. The Equality Commission's Practical Guidance on Equality Impact Assessment states that:</p>	<p>Detailed data of the type described are not available to the PPS.</p> <p>The Guidelines recognise that decisions are required on the extent to which the law may have to take into account mental ill health, mental capacity and learning disability in determining a breach of criminal law (section 6 refers). Furthermore, the Guidelines acknowledge that those who have any such vulnerability should not suffer discrimination, unfair criminalisation or unfair punishment in so far as is possible.</p>
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“In order to fully mainstream Section 75 into all functions, public authorities will need to build up ready sources of data which can be called upon when undertaking EQIAs.

Proper screening of a policy based on all available disaggregated qualitative and quantitative data is a pre-requisite to determining if there is the potential for differential adverse impact or if there are actions which should be taken to better promote equality of opportunity and consequently the need to carry out a full EQIA.

In addition, section 75 of the Northern Ireland Act 1998 requires more than avoidance of adverse impact, it also requires a proactive approach to be taken by designated public bodies to ensure the promotion of equality of opportunity where greater protections are required for groups who will be disproportionately impacted upon by proposals. The Equality Commission’s Guidance for Public Authorities on Implementing Section 75 of the Northern Ireland Act 1998 states that:

“The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society

<p><i>– indeed such action may be an appropriate response to addressing inequalities.”</i></p> <p>Designated public bodies are required to not only ensure that there is no adverse impact suffered by members of any of the section 75 categories as a result of the proposed legislation, policy or practice, but also to have due regard to the need to promote equality of opportunity amongst members of the nine groups. This means that there is a statutory obligation on the PPS to take action not only to mitigate against adverse impact or inequality but also to proactively promote equality of opportunity in order to comply with section 75 of the Northern Ireland Act 1998.</p>	
<p>Conclusion</p> <p>The Children’s Law Centre is grateful to have the opportunity to make this submission to the PPS its consultation on Guidelines for the Prosecution of Young Offenders. We hope that our comments have been constructive and useful and are more than happy to meet with members of staff from the PPS to discuss anything raised in this response. We wish to be kept informed of progress in the development of the Guidelines for the Prosecution of Young Offenders and look forward to the issues raised in this response being addressed, taken forward by the PPS. We also look forward to receiving the information requested in</p>	<p>Noted.</p> <p>Thank you for your response.</p>

this response as soon as is practicably possible.	
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Commissioner for Children and Young People

Comment	PPS Response
<p>1. Use of the term ‘Young Offenders’</p> <p>NICCY’s concern in relation to the use of this terminology is twofold. Primarily, the use of the term ‘Young Offenders’ is inappropriate in Guidance which specifically refers to the <i>prosecution</i> (not conviction) of juveniles, who of course are presumed innocent until found guilty under the law. It is therefore incorrect to label these young people as Young Offenders before they are subject to a finding of guilt.</p> <p>Secondly, NICCY takes cognisance of the Riyadh Guidelines which describe how such labelling of young people can subsequently contribute to them displaying corresponding patterns of behaviour. By avoiding such labels and adopting a “children first” approach PPS is more likely to realise the best interests of the child.</p> <p>NICCY therefore recommends that the Guidelines be re-named to refer to the Prosecution of Children.</p>	<p>Accepted. The title of the Policy has now been amended to ‘<i>Guidelines for the Prosecution of Young People</i>’.</p>
<p>2. Data</p> <p>In her 2018 ‘Statement on Children’s Rights in Northern Ireland’, the Commissioner called for the Youth Justice System to publish annual performance data. We also note that in June 2017 the NI Audit Office found that a lack of reliable data makes a long term analysis of the effectiveness of the Youth Justice System difficult.</p>	<p>The best interests of the child principle is central to all PPS working practices involving children and young people. The Child’s Rights Impact Assessment was considered and the large majority of its considerations were adopted in the development of this policy.</p>

<p>NICCY therefore recommends that the PPS collects relevant data and undertakes a child’s rights impact assessment to ensure that its work complies with children’s rights. We have attached a helpful guide from the Welsh Government (Appendix 1).</p>	<p>The collection and collation of CJS-wide data in respect of youths is primarily a matter for the Department of Justice.</p>
<p>3. Participation of Children and Young People in the Formation of the Guidelines</p> <p>These proposals will directly affect children and young people and so they must be consulted in relation to them in line with the statutory equality obligations on designated public authorities under section 75 of the Northern Ireland Act 1998. Ongoing consultation, engagement and feedback with children and young people are also essential in ensuring the Government’s compliance with Article 12 of the UNCRC.</p> <p>The Equality Commission’s Guidance for Public Authorities on Implementing Section 75 of the Northern Ireland Act, 1998 states that in conducting consultations, the accessibility of language and the format of information should be considered to ensure that there are no barriers to the consultation process, with information being made available on request in accessible formats. Systems should be put in place so that information can be made available in accessible formats in a timely fashion. In addition, the Commission’s Guidance recommends that specific</p>	<p>We have consulted with staff and young people at Hazelwood Integrated College regarding the content and format of the policy document. A PowerPoint presentation on key sections of the policy was given, followed by an informal question and answer session. The group consisted of 15-18 year old mixed ability pupils. Positive feedback was received.</p> <p>We have also attended the Lakewood Centre, Bangor and met with members of staff, Directors of the Trust, Clinical psychologists and psychiatrists, those who have responsibility for the young people at Lakewood. We received positive feedback on the policy document and a number of suggestions for improvement which were subsequently incorporated.</p> <p>PPS have also consulted with 2 groups of children with experience of care who provided valuable feedback which has been taken into consideration and has helped shape both the final draft of the policy document and the associated information booklets. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.</p>

consideration is given to how best to communicate information to children and young people, people with learning disabilities and minority ethnic communities. The Equality Commission's Guidance for Consulting with Children and Young People, "Let's Talk, Let's Listen" reminds Government that children and young people have particular needs concerning information and that actions should be taken by Government to facilitate young people to take part in consultation and decision-making processes, especially on issues that affect them. It emphasises the particular importance of considering which methods are most appropriate for consulting children and young people. Public authorities should also make sure to provide information which is clear, easy to understand and in an appropriate format, to ensure there are no problems preventing effective consultation with children and young people.

We would be grateful if you would provide us with details of how you have or intend to consult directly with children and young people as part of this consultation process. We also wish to request copies of the child accessible version of this consultation document by return.

It is unclear whether an adapted children and young person friendly version of the Guidelines have been drafted and we would be obliged if this could be clarified. UNCRC General Comment No. 12 makes clear that the

<p>child's 'right to information' is an essential component of young people's right to participate in any judicial proceedings affecting them. These guidelines must therefore be made available in a child friendly version, to enable a meaningful realisation of this right.</p> <p>NICCY therefore reminds the PPS of its duty to consult directly with children and young people and for their views to be taken into account as part of the process in the development of these guidelines.</p>	
<p>4. Best Interests Principle</p> <p>As outlined above the Justice (NI) Act, 2002 was amended in 2015 to introduce the best interests principle as a core aim of the Youth Justice System in NI. This enshrines into domestic law Article 3 of the UNCRC.</p> <p>NICCY wishes to commend the PPS for both the inclusion of this principle throughout the Guidelines and in particular the thorough definition of the principle on page 9.</p> <p>However, we recommend the further specific inclusion of the best interests principle in the following sections:</p> <ul style="list-style-type: none"> - para 4.1 Youth Diversion – General principles; - para 4.3.9 Factors to be considered in respect of Youth Engagement; - para 4.4 Factors to be considered in respect of diversion; - para 5.3.1 The decision to 	<p>Noted – thank you.</p> <p>Not accepted. The best interests of the child principle is central to PPS working practices involving young people. To include the best interests principle in a list of factors would suggest that it is something which either may or may not be considered, when it is actually an overarching principle that is taken into account as a matter of course by prosecutors taking decisions in cases involving young people.</p>

<p>prosecute (LAC);</p> <ul style="list-style-type: none"> - para 6.2.3 Mental Health and Learning Disabilities, Key considerations. <p>Additionally NICCY recommends that PPS develops indicators and gathers evidence to demonstrate and monitor how they are adhering to this principle (as part of the child’s rights impact assessment).</p>	<p>Partially accepted. The best interests of the child principle is central to all PPS working practices involving children and young people. However it is our view that any requirement for Youth Prosecutors to evidence their detailed considerations would represent a significant administrative burden which will inevitably add to delay. However further consideration will be given to the strengthening of the quality assurance framework in place around youth cases.</p>
<p>5. Delay</p> <p>The Beijing Rules describe the speedy conduct of formal procedures in juvenile cases as a <i>‘paramount concern’</i>. Further, the ‘Review of the Youth Justice System in NI’ identified that delay was <i>‘far and away the most urgent challenge’</i>. This review went on to suggest that <i>‘all relevant agencies should find the means to significantly reduce the time taken in advance of the legislation’</i>. The latest DoJ data show that young people consistently wait longer than adults for their cases to be dealt with in Magistrates’ courts and that whilst the median time for charge cases has fallen there has been a 55% rise in time taken for summons cases. Therefore, despite a whole system programme to reduce delay there has been minimal improvement in addressing delay for youth justice cases.</p>	

We have some concern in relation to Para 3.3.1 of the draft guidelines which states that a prosecution decision should be taken ‘as *expeditiously as possible*’. This is insufficiently precise to address the issue of delay in any meaningful way. We welcome the PPS initiative to process diversionary disposals in a timely manner, however, we echo the recommendation of the Youth Justice System Review that the success of this must be monitored.

- (a) In line with the ‘Review of the Youth Justice System in NI’, we **recommend the implementation of internal PPS time limits for the administration of each stage of a prosecution.** We wish to address specifically the possible causes of delay and the solutions for reducing this at each stage as follows:
- (b) We have significant concerns in relation to the time taken to consider a file once it has been submitted to the PPS by the PSNI, before a summons is issued. **We recommend the implementation of internal PPS time limits for the consideration of PSNI files and the subsequent issuing of summons;**
- (c) We would suggest that data should be collected to monitor the length of time between the issuing of a summons and the first court date. **NICCY recommends that time limits should be introduced for the listing of a first appearance court date from the date a summons was issued, although we recognise the**

The PPS have internal time limits in place to minimise avoidable delay.

PPS is currently taking decisions on youth cases against the time frames outlined in the joint protocol between PSNI and PPS.

The PPS as an organisation is very conscious of the issue of avoidable delay and we are continually working with partners across the Criminal Justice System to address emerging issues.

The data referred to is currently collated by the Department of Justice via their ‘Guideline Time Limits’.

<p>implications of this recommendation on the NICTS;</p> <p>(d) Anecdotal evidence would suggest that often by the time a charge matter is before the court that the PPS are not in a position to make a final decision with regards to the charges they are proceeding with. The matter is then adjourned until they are able to make this decision. We are concerned that the PSNI are proceeding to charge before there is sufficient evidence for the reasonable prospect of conviction test to be met. NICCY therefore recommends that the PPS monitor the number of cases which are charged to court, before they are ready to proceed.</p> <p>(e) We understand that often the prosecutor in Youth Courts is not the directing officer, or the prosecutor with carriage of the case. We are concerned about the delay this causes as the prosecutor in court is unable to make an immediate decision to divert, following defence solicitor's oral request for this in court. The result of this is that the matter is adjourned to enable the defence solicitor to write to the directing officer with their suggestion that the matter should be diverted. Further, we have been advised about subsequent delay in the consideration of these written requests by directing officers, which causes a significant number of unnecessary adjournments. If for some unavoidable reason a request for diversion cannot be considered in advance of the next court date</p>	<p>The initial charging process is a matter for the PSNI. It should be noted that only a small minority of young people (10-15% each year) are charged by police, and normally only in respect of the most serious offences only.</p> <p>All charges are subject to review by a PPS Prosecutor.</p> <p>It is accepted that the prosecutor in court is not always the Directing Officer, however this situation is unavoidable, given the nature of court listings. Where adjournments are sought, the reason is that the Directing Officer (usually a Youth Prosecutor) will have detailed knowledge of the offence and the background of the young person and is therefore best placed to take an informed decision on the appropriate course of action for that individual.</p> <p>Whilst we cannot comment on individual cases, further adjournments may be sought in certain cases where additional information is required before an informed decision on diversion can be taken. Often this information is not available and will have to be sought from police, medical experts etc. Prosecutors will only ask for adjournments when absolutely necessary and will always be</p>
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<p>(meaning that the matter would need to be further adjourned), defence solicitors should be notified so the young person can be advised of this in advance of court. Finally, consideration may also need to be given to imposing time limits on defence solicitors for submitting their requests for a diversion. Given that the Youth Justice Review highlighted that ‘urgent attention’ needed to be given to driving down the time taken for diversionary disposals, NICCY recommends that internal time limits be introduced for the consideration of defence solicitor requests for a diversion, once the matter is before the court;</p> <p>(f) Alternatively, we would recommend that consideration be given to introducing a system for defence solicitors to correspond with the PPS and make an argument that the matter should be diverted, after the PPS have made an initial decision to prosecute but prior to first appearance in court. This is because, as discussed in the above paragraph, the consideration of these requests often results in multiple adjournments once the matter is before the court. In our view, the 28 days between the decision to charge and the first court date could be used more effectively for the consideration of such requests. Consideration should be given to implementing a process whereby there is a time limit for defence submission of such requests, and a further time limit for the PPS to make a decision. In addition to this, a similar system could be introduced for</p>	<p>mindful of avoiding delay in accordance with the best interests of the child principle.</p> <p>It should be noted that defence solicitors can correspond with PPS regarding diversion at any time before or after proceedings have commenced and the request will be duly considered.</p> <p>Please see above.</p> <p>Targets for each stage of the prosecution process in relation to young people are currently in place. There is a protocol between PSNI and PPS which sets out the agreed time frames.</p>
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<p>the period between the issuing of a summons and the first court date. However, this is of course dependent on the young person or their parent or guardian instructing a solicitor in a timely manner. It is therefore also important that the PPS ensure that the language used in all relevant paperwork is child friendly and accessible. We are of course also cognisant of the fact that the criminal legal aid system would need to be amended accordingly to facilitate this.</p> <p>NICCY recommends that consideration be given to implementing a system whereby defence solicitors can submit a request for a diversion, once a decision to prosecute has been taken, but before the first court date.</p> <p>NICCY recommends that the PPS gather specific data surrounding the number of PPS sought adjournments in the Youth Court, and in particular monitor the reasons that the PPS sought these adjournments.</p> <p>NICCY would recommend that the PPS consider the implementation of internal administrative time limits for each stage of the prosecution of juveniles. In line with the Youth Justice System Review Recommendations, data must be collected to monitor adherence to these deadlines.</p>	<p>Please see above.</p> <p>PPS will consider how this can be taken forward as part of a future quality assurance exercise by the Policy and Information Unit.</p> <p>Please see above.</p>
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6. Bail and Custody as a last resort

Prosecutors should be reminded that the Concluding Observations of the UN Committee on the Rights of the Child (2016) reminded the UK government of its responsibility to under article 37(b) of the UNCRC that detention and imprisonment shall be used “only as a measure or last resort and for the shortest appropriate period of time.”

In view of the fact that in 2017/18 71% of young people in custody in the JJC were on remand there is NICCY would welcome the insertion of guidance on the PPS attitude to bail outlining a presumption of bail without conditions.

NICCY recommends the insertion of a section on the PPS attitude to Bail in the Guidelines.

The PPS approach to bail is outlined at Annex B of the guidelines.

7. The Prosecution Decision

We welcome the assertion in Paragraph 3.2.5 that the decision whether or not to prosecute must take into account an analysis of background information of the child provided by other agencies. However, we would suggest that this should be widened to include an obligation on Prosecutors to proactively seek background information from the relevant agencies involved with the child. Given that the decision to prosecute a child is so sensitive, with profound impact on the young person’s life outcomes and well-being, it is important that Prosecutors are fully equipped with all the necessary

Prosecutors welcome and take account of all information available to them when taking decisions in relation to young people. In the event that further information comes to light at a later stage, the position can be reviewed.

Where there are clear evidential gaps, Youth Prosecutors will normally take steps to acquire the relevant information by issuing a ‘Decision Information Request’ (DIR) to police.

<p>information to enable them to make a decision.</p> <p>We wish to remind the PPS of the recommendation of the 'Review of the Youth Justice System in NI' which suggests that the high proportion of 'no prosecution' cases must be examined, with a view to removing them from the formal system at an earlier age. Again, we would suggest that this should be considered as part of the child's rights impact assessment.</p> <p>NICCY recommends the insertion of an obligation on prosecutors to seek background information on the child when considering prosecution. NICCY further recommends that the high proportion of 'no prosecution' cases be examined.</p>	<p>The PPS have internal time limits in place to minimise avoidable delay.</p> <p>Whilst no prosecution rates in cases involving youths is higher than the overall rate for all suspects, the difference is not significant. PPS will consider whether this can be included as part of a quality assurance exercise by the PPS Policy and Information Unit.</p>
<p>8. Training of Prosecutors</p> <p>The Riyadh Guidelines suggest that all professionals working in the Juvenile Justice System should be specialised and trained to respond to the unique needs of young people. NICCY would therefore welcome the introduction of specialised training for prosecutors working within the Youth Justice System. In particular, the decision as to whether to offer a diversion is highly complex and requires the consideration and balancing of a number of factors to avoid arbitrary application. It would be our view that Prosecutors require specialised training to enable them to make such decisions, not least because of the</p>	

<p>profound impact a prosecution may have on a young person, in terms of both their well-being and the acquisition of a criminal record.</p> <p>NICCY recommends that all prosecutors working within the Youth Justice System receive specialised training.</p>	<p>All Youth Prosecutors have received specialist youth training and this is updated and developed as and when training needs are identified.</p>
<p>9. Youth Diversion</p> <p>9.1 The Beijing Rules are clear that the provision of systems of review and appeal are necessary to permit scrutiny of decisions and enable accountability. In this regard, we would be obliged if the PPS could clarify whether there is an internal appeal against the refusal to offer a diversion. Given that the criteria for a diversion could be considered as somewhat subjective, it is important that there is an appeals mechanism against any decision not to divert.</p> <p>9.2 Further, we have significant concern that the diversionary landscape is too complicated and confusing for parents and their children. In particular we have some concern, that young people do not understand the difference between Court Ordered and Diversionary Youth Conferences. In our view, this is most likely because the child’s experience at each conference is broadly similar. NICCY recommends that the PPS give consideration as to how this can be clarified for young people. Fundamentally, if young people fail to comprehend any material or practical difference between Court Ordered and</p>	<p>Once a prosecutor has taken a decision not to divert a case involving a young person, there is no right of appeal. In the event that additional information comes to light, the original Directing Officer will consider the material and decide whether there is any change in position. If not, the prosecution should proceed as directed.</p> <p>Where appropriate, prosecutors will seek to divert a case involving a young person away from the formal criminal justice system; it is important, therefore that there is a range of diversionary disposals available to meet the particular needs and circumstances of each individual case.</p> <p>In many instances, support is available to young people and their parents in the form of a Youth Engagement Clinic. The young person will have an appropriate adult at the clinic and may engage the services of a legal representative. The Youth Justice worker and the Youth Diversion Officer will also advise the young person what the prosecutor has decided in their case.</p>

<p>Diversionsary Youth Conferences, it is our view that one of the principle aims of diversion is entirely lost.</p> <p>9.3 It is therefore important that if a child’s right’s impact assessment is undertaken, that it monitors the level of comprehension of young people surrounding the diversionsary landscape as well as informed consent of young people concerning diversionsary disposals.</p> <p>9.4 NICCY would suggest that the principle of proportionality, as outlined in recommendation 6 of the Youth Justice Review should be inserted below Paragraphs 4.4 ‘Factors to be considered in respect of Diversion’:</p> <p><i>‘The aims of the Youth Justice System should reflect the principle of proportionality and include a presumption that low level offending should be dealt with by parents (with support where necessary), school and communities or through a police disposal. This will require:</i></p> <ul style="list-style-type: none"> a. the introduction of triage (or similar) at the point of arrest; b. building on the successful practices of community based restorative justice schemes; c. the extension of police discretion 	<p>They will also explain what the disposal means in practical terms and the options and possible support open to them as part of the Youth Engagement process.</p> <p>Ultimately, any reform of the youth justice process, including the range of diversionsary disposals available, is a matter for the Department of Justice.</p> <p>See above.</p> <p>Not Accepted. The issue of proportionality is always at the forefront of PPS thinking and is considered as part of the decision-making process in cases involving young people. To include proportionality in a list of factors would suggest that it is something that prosecutors can either choose or not choose to take into account, when actually, it is taken into account as a matter of course during the decision-making process.</p> <p>Whenever possible, low level offending involving young people should be addressed by parents and schools. It is only when there has been an escalation in the seriousness or frequency of the offending behavior that matters progress to the criminal justice system.</p> <p>The best interests and welfare of the child or young person is always taken into account when prosecutorial decisions are</p>
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<p>while ensuring adequate safeguards;</p> <p>d. greater use of police warnings and cautions for offences that would otherwise have been dealt with through more formal channels.</p> <p>NICCY wishes to remind the PPS of the recommendation of the Youth Justice Review that most cases should be dealt with outside the Justice System. We recommend the insertion of this at Paragraph 4.4 'Factors to be considered in respect of diversion'.</p> <p>9.5 NICCY strongly recommends that as part of the child's right's impact assessment, that data should be collated surrounding the decision to prosecute and the use of diversionary disposals. This data should also monitor the number of cases which are diverted after the decision has been taken to refer the matter to court.</p> <p>Youth Engagement</p> <p>9.6 We have some concern that children are not being reminded of their right to legal advice at Youth Engagement clinics. We would welcome assurance from the PPS that if there is a solicitor on record for the young person, that they are formally invited to these clinics, and if not, that the young person is reminded of their right to obtain a solicitor.</p>	<p>being taken in youth cases. Prosecutors will consider whether a prosecution is likely to have an adverse impact on the child's future prospects that is disproportionate to the child's offending.</p> <p>Once in contact with the system, diversion is considered in all but the most serious indictable cases involving a young person. As explained in the policy document, there are a number of diversionary disposals that can be explored.</p> <p>Data re the decision to prosecute and decisions regarding diversionary disposals are collated and reported on internally within the PPS. Figures in respect of cases withdrawn at court to go by way of diversion can also be produced.</p> <p>This is beyond the remit of the PPS. We are however currently reviewing our correspondence to include a reminder to young people regarding the need to enlist the services of a solicitor.</p> <p>Further, Police have a standard form which is completed at all Youth Engagement Clinics, which evidences whether legal advice was obtained or whether legal advice was recommended, but declined. Police are monitoring the situation closely as information would suggest that whilst legal advice is</p>
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	recommended and available, it is not being accessed by young people.
<p>10. Criminal Records</p> <p>The draft Guidelines state that diversionary disposals concerning children will be recorded on their criminal record. This is in direct conflict with Recommendation 21 of the Review of Youth Justice which states that <i>‘diversionary disposals should not attract a criminal record or be subject to employer disclosure’</i>.</p> <p>NICCY wishes to remind the PPS that in 2016 the UN Committee on the Rights of the Child recommended that the UK Government should:</p> <p><i>‘ensure that children in conflict with the law are always dealt with within the juvenile justice system up to the age of 18, and that diversion measures do not appear in children’s criminal records’</i>.</p> <p>It is our belief that to record diversionary disposals on a juvenile’s criminal record is firmly contrary to the intention of diversion.</p>	Any policy decisions regarding the maintenance of criminal records in relation to young people is a matter for the Department of Justice and the NI Assembly.
<p>11. Looked after Children & Children with Learning Disabilities/Mental Health Problems</p> <p>Whilst we commend the endeavour to consider the particular vulnerabilities of Looked After Children and those with learning disabilities and or/mental health issues, we have some concern that other vulnerable groups have not</p>	All vulnerabilities where known will be considered by prosecutors dealing with cases involving young people.

<p>been included. We would suggest that if there is to be a focus on certain groups of vulnerable children, that all such groups must be considered separately. It is not in the interests of justice to specifically examine the special circumstances of some groups, but to ignore those of others.</p>	
<p>12. Sexual Offences/Bullying/Road Traffic Offences</p> <p>It is not entirely clear to us why there has been a focus on sexual offending, bullying and road traffic offences. It appears inconsistent to focus on these groups of offences without referring to other types of crime. We would welcome clarity surrounding the reasons for the focus on these particular areas.</p>	<p>Accepted. The policy document has been amended in this regard (section 1.7 refers).</p> <p>Thank you for your response.</p>

Department of Justice

Comment

PPS Response

Title of Document, and also Page 4, Para 1.1.2:

The use of the term “young offender” may be acceptable where a young person has been found guilty of, or admitted committing, an offence. However to use young person and young offender interchangeably is not appropriate as it implies that all young people being prosecuted are guilty, which is not the case.

Accepted. The title of the document has been amended to: *'Guidelines for the Prosecution of Young People'*.

Page 35, Annex B:

Much of this Annex has been taken directly from the Youth Justice Review, published in 2011. It is therefore out of date and should be reviewed in detail. Particular issues with the information presented include:

Pg 35, second para – is the figure of 10,000 children still accurate, given the decreasing numbers entering the justice system in recent years? And is the percentage of the population still accurate?

Pg 35, final bullet – NIPS has no responsibility for children in custody any longer;

Pg 36 – are there still 17 courts operating across the country, given the number of closures we have seen in recent years?

Accepted. The policy document has been amended in accordance with the points raised.

Page 44, Annex D:

It is very commendable that PPS staff have received training in ACEs theory and will be able to avail of the ACE questionnaire for any Looked After Children going through the prosecution process. However, many young people who are not LAC also have ACEs in their history which may have contributed to their antisocial or offending behaviour and results in them entering the criminal justice system. Therefore should this consideration of ACEs and the impact they may have had not be applied to **all** children being prosecuted, regardless of whether they are LAC or not?

Accepted. As a result of training undertaken, Prosecutors have an understanding of ACEs and are aware that they apply to young people other than children with experience of care.

Prosecutors are live to the issues and sensitivities around dealing with cases involving young people. All available information will be taken in to account by Prosecutors taking decisions involving young people.

Thank you for your response.

Include Youth

Comment

PPS Response

1. International children and human rights standards

It is vital that any policy or practice relating to young people in the criminal justice system is guided by and founded in international children and human rights standards including the European Convention on Human Rights and the United Nations Convention on the Rights of the Child (UNCRC). We welcome the reference to the UNCRC within the draft Guidelines and in particular the reference to Article 3(1) on the best interests principle. We would welcome reference to other relevant international standards including the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty. It would also be beneficial to refer to the Concluding Observations of the Committee on the Rights of the Child from the fifth periodic examination of the UK as well as the General Comment No 10 on children's rights in youth justice and General Comment No12 on the right of the child to be heard.

Furthermore, the PPS would benefit from referring to the Council of Europe's Guidelines on Child Friendly Justice.

The references to International children and human rights standards are contained within Annex C of the policy, as indicated at paragraph 1.2.3 of the document.

Our aim was to make the policy document as accessible as possible and therefore a decision was taken to include the relevant references, which are technical in nature, in the annex of the policy as opposed to the main body of the document.

References to the various international standards have been reviewed and expanded as necessary.

<p>2. Information Provision</p> <p>Information should be provided in a form accessible to children and young people, appropriate to their age. This is particularly relevant given the high number of young people with special educational needs, communication difficulties and low levels of literacy coming into contact with the criminal justice system. Knowledge at all stages of the process from pre-arrest through to post-disposal is essential if children and young people are to be active participants in the processes which will dramatically impact on their lives.</p>	<p>Information booklets are being provided. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.</p> <p>The PPS is not in a position to confirm the nature of police processes and procedures from the point of arrest/pre-arrest. We can only outline the processes from the point where PPS receive a file.</p> <p>Further information on PSNI processes can be found at www.psni.police.uk.</p>
<p>3. Participation of young people in the consultation and drafting of the PPS guidelines</p> <p>Statutory equality obligations under Section 75 place an obligation on designated public authorities to carry out consultation with children and young people and to remove any obstacles to meaningful consultation that may exist. It is clear that the PPS Guidelines will have an impact on children and young people. The Equality Commission advises that consultation with affected groups should take place at the earliest stage possible, so that they can influence the direction of travel from the outset. It is crucial that the PPS consult with children and young people in the development of the Guidelines and it would be particularly advantageous to consult with those young people who may be</p>	<p>We have consulted with staff and young people at Hazelwood Integrated College regarding the content and format of the policy document. A power point presentation on key sections of the policy was given, followed by an informal question and answer session. The group consisted of 15-18 year old mixed ability pupils. Positive feedback was received.</p> <p>We also attended the Lakewood Centre, Bangor and met with members of staff, Directors of the Trust, Clinical psychologists and psychiatrists, those who have responsibility for the young people at Lakewood. We received positive feedback on the policy document and some suggestions for improvement which were subsequently incorporated.</p>

<p>more likely to come into contact with the justice system or those who have already experienced contact with the justice system. We would also recommend that the PPS refer to the Equality Commission’s guidance “Let’s Talk Let’s Listen”.</p> <p>Despite, Include Youth’s request from the beginning of the consultation process for the PPS to provide a child and youth friendly version of the consultation document, no such version, at the time of submitting this response, has been provided by the PPS. It is very disappointing that the PPS did not have a youth friendly version of the consultation document available from the outset but even more frustrating that no such document has been made publicly available at this late stage of the consultation process. We would like to receive details on how the PPS has attempted to ensure that young people’s views have been heard and taken into account in the development of these guidelines. We would also like to receive the child and youth friendly version of the document.</p>	<p>Further, we have met with 2 groups of children who are care experienced and obtained their views, both in relation to the policy document and associated information booklets. In addition to receiving positive feedback from the groups, we were also provided with very helpful suggestions for improvement which were taken on board and helped to shape the final version of the documents.</p> <p>As outlined above, information booklets are being provided. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.</p>
<p>4. Best Interests</p> <p>We welcome the commitment within the Guidelines to the best interests principle and the reference to the aims of the youth justice system which includes to “have the best interests of children as a primary consideration” as outlined in the Justice Act (NI) 2015. Include Youth welcomed this amendment to the Justice (NI) Act 2002 which</p>	<p>Noted – thank you.</p>

<p>enshrines Article 3 of the UNCRC into domestic law and commend the PPS for making their commitment clear to incorporate its obligations under the revised statutory aims of the youth justice system into its working practice.</p> <p>We would recommend that the PPS examine further with all staff what considering the best interests of the child actually means in practice. The PPS could be guided in this by looking at some of the international standards already referred to, such as the Council of Europe Guidelines on Child Friendly Justice. We would welcome the collection of information and monitoring data by the PPS which would demonstrate that they are upholding the best interests principle in all aspects of their policy and practice.</p>	<p>All prosecutors have received training on the best interests principle and it is anticipated that refresher training will be delivered following the launch of the youth policy. We will continue to identify and address further training needs on an ongoing basis.</p> <p>Prosecutors consider the best interests of the child principle as a matter of course when taking all decisions in relation to young people. Whilst there are no formal procedures in place for recording or monitoring the fact that it has been taken into account, the best interests principle is routinely considered by prosecutors.</p> <p>Youth files are regularly reviewed by a Senior Public Prosecutor and the rationale for the decision considered.</p>
<p>5. Delay</p> <p>We note that in paragraph 3:1:1 of the Guidelines it states that in relation to a decision to prosecute, '<i>any decision should be taken as expeditiously as possible</i>'. We are concerned that the term 'expeditiously' is too vague and does not allow for a more rigorous approach to the issue of delay. We would suggest that the PPS consider the implementation of internal administrative time limits for each stage of the prosecution of young</p>	<p>PPS decisions in summary only cases involving young people are currently taken in an expeditious manner and generally within the time frames stipulated in the joint protocol between PSNI and PPS.</p> <p>Indictable cases will, by their very nature, take longer to process, however prosecutors work closely with the PSNI to ensure that decisions in cases involving young people are taken as quickly as possible.</p>

<p>people and that evidence is collected over a period of time to ensure that these time limits are being met.</p>	<p>The PPS do have internal administrative time limits which are adhered to by staff and the information is monitored by senior management.</p> <p>There are also regular meetings of youth specialists, during which the progress of files is discussed.</p> <p>Addressing the issue of avoidable delay is a primary consideration for the PPS and the organisation is working with other criminal justice partners to enhance efficiency and reduce delay.</p>
<p>6. Court as a last resort</p> <p>We would welcome reference within the Guidelines to Article 37 of the UNCRC. Article 37 of the UNCRC contains a number of principles in relation to the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment and conditions for children deprived of their liberty. Article 37b and other international standards affirm the placement of a young person in an institution should always be a disposition of last resort and for the minimum necessary period. The UN Committee on the Rights of the Child have made numerous calls for the UK government to use detention only as a matter of last resort and for the shortest appropriate period of time and to ensure that detention is not used discriminatorily against certain groups of children.</p> <p>We would welcome reference within the Guidance to the principle of custody as a last resort, outlining the</p>	<p>The guidance as drafted, is informed by International Human Rights law and practice, including the UNCRC.</p> <p>There is a statutory presumption in favour of bail when dealing with cases involving young</p>

<p>PPS position on the principle and its approach to bail.</p>	<p>people, and bail will only be refused if certain criteria are met.</p> <p>The test for bail in the case of a young person is contained in Article 12 of the Criminal Justice (Children) (NI) Order 1998 and is outlined at Annex B of the policy document.</p>
<p>7. Key considerations in the decision to prosecute</p> <p>We welcome the commitment in paragraph 3.2.4 to pay regard to <i>‘all known relevant facts and circumstances of the young person’s environment, age/maturity, educational attainment, family circumstance’</i>.</p> <p>We note that the Guidance refers in paragraph 3.2.5 to the fact that taking into account the best interests of the child principle <i>‘may’</i> also involve an analysis of a cluster of background information on the child provided by carers, YJA, PSNI, education bodies and social services. We believe that the word <i>‘may’</i> is too weak and should be replaced by <i>‘must’</i>. We believe that Prosecutors should have an obligation placed on them to actively seek out relevant information from as wide a range of bodies as necessary, including from any voluntary and community sector organisations that the child or young person has had contact with.</p> <p>Coupled with the need to gather background information on the child we believe that Prosecutors would benefit from children’s rights training</p>	<p>Noted – thank you.</p> <p>Prosecutors take account of all information available to them when taking decisions in relation to young people. In the event that further information comes to light at a later stage, the position can be reviewed. Where there are clear evidential gaps, Youth Prosecutors will normally take steps to acquire the relevant information by issuing a <i>‘Decision Information Request’</i> (DIR) to police.</p> <p>Prosecutors have recently received training and are aware of ACEs and associated issues.</p> <p>The PPS is committed to providing relevant training to prosecutors to assist with the decision-making process. This is an ongoing commitment to address training needs.</p>

<p>and in particular training to raise awareness on the complex challenges that many of the children they come into contact with face on a daily basis and what impact a disposal can have on their lives.</p>	
<p>8. Understanding the prosecution decision</p> <p>We note in paragraph 3.3.1 that the Guidance states that information should be provided in such a way that the decision outcome is easily understood. We welcome this commitment to provide information in an accessible format as we are aware that many children, young people and families find it difficult to understand the reasons for the decision. We would recommend that the PPS do some follow up work to ensure that this aim is being met.</p>	<p>This area will be considered as part of our ongoing review of our victim / witness correspondence.</p>
<p>9. Diversion</p> <p>Include Youth would like to see a clear commitment to diversion away from and out of the justice system within the Guidelines. We are also concerned that some diversionary measures can only be accessed through the admission of guilt and the informed consent of the child. This is particularly worrying given the fact that many of the young people we work with appear to find the various options under diversionary disposals very confusing. There are so many diversionary options available that young people are often unclear about what is being offered to them. It is critical that young people do not</p>	<p>Current diversionary disposals are only available where there has been an admission of guilt. Any reform of the diversionary process is ultimately a matter for the Department of Justice.</p> <p>PPS are committed to diverting cases involving young people out of and away from the formal Criminal Justice System, where it is appropriate to do so.</p> <p>Once in contact with the system, diversion is considered in all but the most serious indictable offences involving a young person. It is important, therefore that there is a range of diversionary disposals available to meet</p>

<p>agree to a diversionary disposal without being fully aware of the impact this decision may have, especially with regard to the possible impact on their criminal record.</p> <p>We remain concerned about the impact of needing to make an admission of guilt to access the diversionary process. We would question the level of involvement the young person has in this process and the extent to which they feel in control of that decision. It is paramount that the young person understands what the implications are when they admit guilt and how this can impact on their future choices. Informed consent is vital to ensure the child's right to a fair trial. Given the profile of young people in the justice system we are also concerned about the capacity of some young people to give informed consent.</p> <p>Within the Include Youth team, concerns have been raised regarding informed consent and meaningful participation by both young people and practitioners with whom they work, particularly concerning diversionary youth conferences. It is questionable whether many young people are in a position to give informed consent and have the capacity to participate, often agreeing to actions and conditions which they do not fully understand. A number of Include Youth practitioners have also expressed the view that some young people are not at the stage of being able to participate meaningfully in</p>	<p>the particular needs and circumstances of each individual case.</p> <p>Prosecutors will take into account all information available to them at the time of decision. If it is apparent that a young person has personal difficulties which would prevent him from engaging with a particular diversionary disposal, the Prosecutor will seek an alternative means of progressing the matter.</p> <p>Where no formal proceedings are directed, there is also an option within the Youth Engagement system to offer help and support to young people on a voluntary basis outside of the conventional Criminal Justice System</p> <p>Youth Justice Agency workers, PSNI Youth Diversion Officers, defence solicitors and appropriate adults all have a role to play in helping young people understand the consequences of accepting cautions/diversionary disposals.</p> <p>Police advise the young person of their right to legal representation for the purposes of caution administration. It is the choice of the individual in consultation with their parents/carers as to whether or not they access this right. Prior to the administration of a caution, a declaration is either read to the young person by the police officer or alternatively, the declaration is given to the young person to read. The declaration outlines the implications of accepting the caution. The young person then signs the declaration and in doing so confirm that they understand the meaning of the caution and the consequences of accepting same.</p>
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<p>proceedings due to mental health issues and learning difficulties. Many of the young people involved with Include Youth who have attended youth conferences report negative experiences.</p> <p>We would welcome a commitment within the Guidance to ensure that the PPS do everything they can to enable young people to fully understand the possible impact of a diversionary disposal and to take steps to provide information in a more easily accessible format.</p>	<p>Police now have a standard form which is completed at all YE clinics which, evidences whether legal advice was obtained or whether legal advice was recommended but declined. Police are monitoring this situation closely as information suggests that whilst legal advice is recommended and available, it is not being accessed for the purposes of caution administration.</p> <p>The policy has been amended and a reference to the possibility of obtaining legal advice can be found at section 1.6 of the policy document.</p> <p>PPS are currently reviewing their diversionary correspondence to ensure informed choices are made by the young person, guided by their appropriate adult and legal representative.</p>
<p>10. Youth Engagement</p> <p>With regard to youth engagement clinics, the issue of securing independent legal representation for young people engaged in the process remains an overriding area of concern. Appropriate legal representation should be made available to young people both in cases where they have not admitted their guilt and in cases where they have admitted guilt. Include Youth is extremely concerned that disposals such as restorative cautions, informed warnings and diversionary youth conferences are being offered at the Youth Engagement Clinics and are being accepted by the children and young people, without access to independent legal representation.</p>	<p>Please see above.</p>

<p>11. Criminal Records</p> <p>We note in paragraph 4.5.1 that PPS diversionary disposals are recorded on a young person’s criminal record and that a record can also be kept on police databases. Recommendation 21 of the youth justice review clearly states:</p> <p><i>Diversionary disposals should not attract a criminal record or be subject to employer disclosure.</i></p>	<p>The maintenance of criminal records is a matter for the Department of Justice and the Northern Ireland Assembly.</p>
<p>12. Looked after Children</p> <p>While we note in paragraph 5.2.3 of the Guidance the recognition that police are more likely to be called to a children’s home than a domestic setting to deal with an incident, and that Prosecutors should bear this in mind when dealing with such incidents, we remain concerned about the potential to criminalise looked after children. We agree that a criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child.</p>	<p>Prosecutors are aware of the issue referred to and where possible, tend not to prosecute young people in such situations in order to avoid the criminalisation of children who are care experienced.</p>
<p>13. Consultation with young people on Guidelines for the Prosecution of Children and Young People</p> <p>To inform our response to the Guidelines we consulted with a number of young people who are currently involved in Include Youth programmes as well as a group of young people detained in Woodlands</p>	<p>All feedback is welcomed and we would be happy to consider the detailed comments if made available.</p> <p>Thank you for your response.</p>

JJC. The ages of the young people ranged between 16 – 24 years old. We spoke to 31 young people in total. The following is an overview of young people’s responses to the Guidelines and more generally, their view on the role of the PPS:

- Young people have a lack of knowledge on the PPS
- The PPS does not consider the best interests of young people
- Factors young people think should be considered before the PPS makes a decision
- Young people’s understanding of the PPS Process
- The PPS does not have all the information they need
- Young people’s views on the training needs of PPS
- Impact of PPS decisions on young people
- Young people’s views on diversion
- Young people’s views on criminal records
- Young people’s views on legal advice

Information Commissioner's Office

Comment	PPS Response
<p>1. Data Protection</p> <p>It will be important to bear in mind the implications that Part 3 of the Data Protection Act 2018 (the DPA 2018) relating to law enforcement processing has on the processing of personal data by PPS in the context of young offenders.</p>	<p>Noted. PPS is fully aware of the issues referred to.</p> <p>Thank you for your response.</p>

Law Society of Northern Ireland

Comment

PPS Response

Response to Question 1

The overall purpose of this policy is to provide guidance on general principles, commitments and associated working practices (e.g. how we take decisions), and to explain the standards of service expected from the PPS when a young person has been accused of a crime. In your view, does the new guidance deliver this? (If not, please explain the reasons why).

First impressions are that the Guidance is impressive.

The theory behind the work practices is comprehensively set out.

Opportunities for a young person's solicitor to make representations on their behalf is consistently absent. There is no reason why this important concept has been left out. An opportunity arises in this document to state practical arrangements for the sharing of information between key stakeholders - including the young person's solicitor.

Noted – thank you.

Accepted. The policy document has been amended in accordance with the points raised with the insertion of paragraph 1.6 (legal advice and representation).

Response to Question 2

The PPS is committed to ensuring that the Best Interests of the Child Principle is adhered to, and that the special considerations which apply to cases involving a young person are reflected in its working practices. In your view, do the approaches set out in the guidance align with the Best Interests of the Child Principle (i.e. is

the guidance appropriate and proportionate)?

One consideration which is absent is the child's right to request and receive independent legal advice, and that the child's solicitor can make representations on their behalf. This needs to be formally recognised and acknowledged in the Guidance as it is in keeping with the principle of a child's best interests.

Please see above.

Response to Question 3

Chapter 5 sets out information / guidance regarding our approach in cases involving Looked After Children and offending within children's homes. Do you agree with this? Are there any other approaches / options we should consider?

Again the Guidance is silent on the right to independent legal advice. Before a young vulnerable person accepts a disposal e.g. restorative caution they should be offered an opportunity to avail of legal advice so that they are fully aware of their options as well as the consequences of adopting one path over another.

Also the Guidance should acknowledge the importance of seeking representations on behalf of a resident from a Children's Home or a Looked After Child from their solicitor, before a Prosecutor makes a decision.

Please see above.

We are currently reviewing our internal correspondence to underline the importance of obtaining legal advice.

<p><u>Response to Question 4</u></p> <p>Chapter 6 sets out information / guidance regarding our approach to the consideration of mental health and learning disabilities in young people who offend. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>As before, consideration must be given to the right for a young person to have a solicitor make representations on their behalf. It is particularly important if that vulnerable young person has additional vulnerabilities and it is certainly in their best interests.</p>	<p>Please see above.</p>
<p><u>Response to Question 5</u></p> <p>Chapter 7 sets out our approach to the consideration of cases involving sexual offences committed by young people. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Nothing to add to the suggested guidance, save that a young person's right to independent representation from a solicitor should be invoked and facilitated at the earliest opportunity. Also the right to make representations on behalf of the young person to the prosecuting authority requires recognition.</p>	<p>Please see above.</p>
<p><u>Response to Question 6</u></p> <p>Chapter 8 sets out our approach to the consideration of cases involving school bullying or cyber-bullying. Do</p>	

<p>you agree with this? Are there any other approaches / options we should consider?</p> <p>Consideration must be given to an opportunity for representations to be sought and received from a solicitor on behalf of the young accused.</p>	<p>Please see above.</p>
<p><u>Response to Question 7</u></p> <p>In taking decisions, PPS prosecutors will consider the impact of Adverse Childhood Experiences (ACEs) see Annex D. In your view, is it appropriate for the PPS to consider the impact of ACEs in the decision-making process?</p> <p>The Society have no objections</p>	<p>Noted.</p>
<p><u>Response to Question 8</u></p> <p>Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?</p> <p>The document is easily understood by professionals but requires to be tested upon others for ease of comprehension.</p>	<p>The PPS have consulted with a range of young people in the development of the Policy.</p> <p>Information booklets are being provided. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.</p>
<p><u>Response to Question 9</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on</p>	

<p>equality of opportunity across any of the s.75 categories? Are there any other comments you would like to make about this policy?</p> <p>On the face of it the Guidance does not adversely impact on s75 obligations and duties. However it is incumbent on the PPS to ensure its compatibility.</p>	<p>Noted.</p>
<p><u>Response to Question 10</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on good relations?</p> <p>No comment.</p>	
<p><u>Response to Question 11</u></p> <p>Are there any other comments you would like to make about this guidance?</p> <p>The importance of an opportunity for representations to be made or requested via a young offender/suspect's legal representative is not recognised anywhere in this Guidelines document. Such representations are extremely important and should be available before a prosecutor makes a decision. If the Guidelines aspire to adherence of the "best interests of the child" principle, it should also be Article 6 of the ECHR compliant. Also there is an opportunity in this document to outline the practical arrangements for the sharing of documentation between all stakeholders in this process including the legal representatives.</p>	<p>Noted and accepted.</p> <p>As outlined above, the policy has been amended in accordance with the issues raised.</p> <p>Prosecutors will consider all information available to them at the time of decision and thereafter. Legal representations will be given due consideration at all stages of the process.</p> <p>Thank you for your response.</p>

NIACRO

Comment	PPS Response
<p>Language:</p> <p>Section 1.1.2 states that “<i>a ‘young person’ or ‘child’ is defined as someone that is under 18 years of age at commencement of criminal proceedings. A ‘young person’ may also be referred to as a ‘young offender.’</i>” NIACRO believes that applying the ‘label’ of ‘young offender’ is counterproductive and out of step with other elements of the Criminal Justice System in Northern Ireland that have embraced desistance theory and language. While the consultation attempts to use judgement free language its slips into judgemental language on 41 occasions in the document.</p> <p>The Youth Justice System and Working with Partners:</p> <p>In section 1.3, PPS partners are listed. These are all statutory agencies. It would have been useful at some stage in the consultation to identify any engagement that PPS has with the voluntary/community-based organisations or to make a commitment to reach out to voluntary/community-based organisations to examine how relations might usefully develop.</p> <p>Best Interests:</p> <p>NIACRO welcomes the commitment by the PPS that it will consider the best interest of a young person before decision is taken on whether or not to</p>	<p>Accepted.</p> <p>The PPS have avoided use of the words ‘young offender’ throughout the document. The term is referred to at section 1.1.2 to acknowledge that a young person who is involved in the Criminal Justice System is still on occasion referred to as a ‘young offender’.</p> <p>PPS has established a new Stakeholder Engagement Forum which includes representation from the voluntary / youth justice sector.</p> <p>Not Accepted. It is made clear in the document that in addition to taking into account the facts and circumstances of any individual case, the PPS will also consider all</p>

prosecute. However, the guidelines are not clear as to how the PPS intends to do this. All that is stated with regard to considering the best interest of the child or young person is that there is no standard definition and that the approach required flexibility. We would recommend that the PPS develop and consult on this important aspect of developing practice.

'Best interest' should also be considered in relation to the delays some face in the process of their cases to court. Some young people who NIACRO spoke to in relation to this consultation were still awaiting outcomes from their cases over a year after initial engagement. Some further shared the concern that they were unsure what was going to happen to their current case when they turned 18, worrying that they would by then be charged as an adult rather than a young person, which they had been at the time the offense occurred.

Age of Criminal Responsibility:

Under the Minimum Age of Criminal Responsibility in Northern Ireland legislation, children as young as 10 years old can be held responsible, and stand trial for, an offense. The 2011 Department of Justice Youth Justice Review recommended, "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."

Whilst NIACRO understands that PPS must carry out their statutory duties and

available background information on the young person - and based on that information, a decision will be taken. In the event that further information comes to light at a later stage, the decision can be reviewed.

Decisions in summary cases involving young people are taken within the time limits set down in the protocol between Police and PPS. Indictable cases are by their very nature more complex and can thus take longer to process.

The issue of avoidable delay is a primary consideration for the PPS, and we are currently working with our partners in the Criminal Justice system to address this.

Any issues around increasing the age of criminal responsibility in Northern Ireland are ultimately a matter for the Department of Justice and the Northern Ireland Assembly.

responsibilities and has no authority over amending legislation, we would urge PPS to apply maximum discretion so as not to prosecute children unless the severity of the offense is unavoidable and warrants that decision. Most children who offend do so for minor offences and rarely pose a risk of harm to others.

Adverse Childhood Experiences:

We note in Annex D, that the PPS have identified a range of Adverse Childhood Experiences. On page 17 there is a list of factors to be considered in respect to diversion. It should be made clear how will the PPS include these considerations when taking into account the best interest of the child/young person who may have committed an offense.

Criminal Records:

NIACRO has previously raised concerns publicly that records young people acquire for the commission of nonviolent petty crime can impact upon future life chances. NIACRO believes that formal punishment or custody when it involves a child or young person would be considered last resort and for extreme cases only. Old and minor convictions received under the age of 18 can have a lasting and damaging impact as a person moves through life. Having a criminal or police record can restrict access to education, employment or training, travel

Prosecutors taking decisions involving young people will divert a case away from the formal Criminal Justice System wherever possible. The list of factors at page 19 of the document is not exhaustive, but contains examples of factors which are considered by prosecutors taking decisions in cases involving young people. Prosecutors will take in to account any information that is available to them at the time of decision and will always have the best interests of the child in mind when such decisions are taken. In the event that further information comes to light at a later stage, the decision can be reviewed.

The maintenance of criminal records is beyond the remit of the PPS and is ultimately a matter for the Department of Justice and the Northern Ireland Assembly.

opportunities and goods or services including insurance; if the person still lives at home, it can also void their parents' house insurance. Moreover, it can also act as a precursor to further offending – rather than the deterrent it was intended to be. Old, minor and spent convictions received under the age of 18 are disclosed through enhanced disclosure checks used by some employers – despite the fact that the vast majority of young people who offend do not pose a real danger or concern to others and employment and/or purposeful activity can positively support desistance.

Looked After Children and Offending within Children's Homes:

A disproportionate number of young people who are "looked after" are represented in the criminal justice system. *Children in care are six times more likely to be cautioned or convicted of a crime than other young people*¹. NIACRO welcomes that the PPS is recognising this cohort of young people and the challenges of their lived experiences. Working with young people in our Independent Representation scheme who are accommodated in Lakewood Secure Care Centre, it is possible young people go into Lakewood without a conviction and end up leaving with a conviction. Some young people find that they are moving between Lakewood and Woodlands Juvenile Justice Centre with no spells in the community and a decreasing level of community connection. NIACRO welcomes the consideration that "Disposals such as restorative cautions, youth conferencing, and disciplinary

Noted – thank you.

measures by the home may be sufficient to satisfy the public interest and to reduce the risk of future offending”. This is exactly the engagement the PPS should be having with the community and voluntary sector in order to be aware of the range of possible interventions, such as peer support and resources, which could be offered to young people who are in care rather than formally placing them in the criminal justice system.

Social Media, ‘Sexting’ and Revenge Pornography:

NIACRO would like clarification as to the PPS’s intentions in relation to section 7.5.4 of the consultation. Specifically, as it states, “where the images shared may have been taken when the victim was under 18, prosecutors should consider whether any offences under the Protection of Children (Northern Ireland) Order 1978 have been committed.” Would this statement apply to the victim who initially sent an intimate image of themselves with their consent (and means that they would not be prosecuted), or does it apply to the person who then shared that intimate image with a further party without the initial person’s consent? There is also opportunity for PPS to explore issues around sexting where intimate images were sent on as a means of bullying, coercion, or increased vulnerability. It is unclear what sort of test or assessment is applied in these cases and how it will prevent secondary victimisation of a person by introducing a potential Protection of Children (NI) Order 1978 prosecution against them when they have

As with all cases, the Test for Prosecution will be applied in the situations referred to. It is accepted, however, that such cases merit, and will be given, special consideration.

already fallen victim to dissemination of an intimate image without consent.

School Bullying and Cyber-Bullying:

NIACRO appreciates that the PPS plans to include interventions in cases of school and cyber-bullying. Our focus would be to understand if diversion plans or attempts to provide restorative justice interventions are being developed in the guidelines to trial before formal action is to be taken. The consultation provides background and relevant considerations; however, intervention and restorative options are not mentioned.

Returning to Adverse Childhood Experiences (ACEs):

NIACRO believes that it is appropriate for PPS to consider ACEs in any decision-making process as to intervention. We appreciate that ACEs discussions are happening across criminal justice agencies. It is not clear to NIACRO how the PPS would use that information. Would knowledge of ACEs help inform an intervention, or would it be used to decide not to prosecute? NIACRO would find it helpful if PPS could provide more information regarding policy and guidance when including ACEs as a contributing factor in a person offending. We would recommend that PPS be mindful of language used when discussing ACEs. For example - instead of using the word "excuse" as in "*children's backgrounds should not be used as an excuse for their offending*" the sentence could read '*children's backgrounds can be a contributing factor for their behaviour and*

The PPS must work within the existing diversionary framework. Any developments / changes to diversionary disposals are a matter for the Department of Justice in the first instance.

Prosecutors will consider all information available to them (including information in respect of ACEs) when taking decisions involving young people.

appropriate interventions should be considered.

Conclusions

NIACRO would welcome the opportunity to engage with the PPS to examine what opportunities for diversionary intervention might be offered through the community and voluntary sector. Greater engagement with communities would enhance the public understanding of the agency's role. There would also be benefit in establishing contact with a range of young people's forums to support the development of good relations and intergenerational engagements.

The PPS must to work within the existing diversionary framework. Any expansion/development of the current system is a matter for the Department of Justice.

Thank you for your response.

Probation Board for Northern Ireland

Comment	PPS Response
<p><u>Response to Question 1</u></p> <p>The overall purpose of this policy is to provide guidance on general principles, commitments and associated working practices (e.g. how we take decisions), and to explain the standards of service expected from the PPS when a young person has been accused of a crime. In your view, does the new guidance deliver this? (If not, please explain the reasons why).</p> <p>Yes, the guidance clearly outlines general principles, commitments and associated working practices and explains the standards of services expected from the</p>	<p>Noted – thank you.</p>
<p><u>Response to Question 2</u></p> <p>The PPS is committed to ensuring that the Best Interests of the Child Principle is adhered to, and that the special considerations which apply to cases involving a young person are reflected in its working practices. In your view, do the approaches set out in the guidance align with the Best Interests of the Child Principle (i.e. is the guidance appropriate and proportionate)?</p> <p>PBNI agree with the intent and purpose of the proposed guidelines in that, the child’s needs should be considered alongside the nature of the offence and a decision to prosecute or not should be proportionate.</p>	<p>Noted.</p>

<p><u>Response to Question 3</u></p> <p>Chapter 5 sets out information / guidance regarding our approach in cases involving Looked After Children and offending within children’s homes. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>PBNI welcomes the information/guidance set out in Chapter 5. There has been much focus on the disproportionate number of looked after children entering the Criminal Justice System in recent years. It is appropriate that efforts are made to ensure that looked after children are diverted from the Criminal Justice System</p>	<p>Noted.</p>
<p><u>Response to Question 4</u></p> <p>Chapter 6 sets out information / guidance regarding our approach to the consideration of mental health and learning disabilities in young people who offend. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>As with young people who are ‘looked after’, young people with mental health and learning disabilities who offend should be diverted from the Criminal Justice System or offered the opportunity to become involved in a diversionary or restorative intervention as appropriate.</p>	<p>Noted.</p>
<p><u>Response to Question 5</u></p> <p>Chapter 7 sets out our approach to the consideration of cases involving sexual offences committed by young people. Do you agree with this? Are</p>	

<p>there any other approaches / options we should consider?</p> <p>PBNI again welcome the detail set out in Chapter 7. In particular, the sections in relation to Consensual Sexual Activity; 'Sexting' and Revenge Pornography; SOPOs and Notification requirements are very helpful.</p>	<p>Noted.</p>
<p><u>Response to Question 6</u></p> <p>Chapter 8 sets out our approach to the consideration of cases involving school bullying or cyber-bullying. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>The evidence suggests that restorative approaches can work well within the school environment. PBNI would propose that diversionary schemes and any measures that prevent a young person from entering the prosecutorial process are welcomed where they are proportionate and appropriate and mindful of the victim.</p>	<p>Noted.</p>
<p><u>Response to Question 7</u></p> <p>In taking decisions, PPS prosecutors will consider the impact of Adverse Childhood Experiences (ACEs) see Annex D. In your view, is it appropriate for the PPS to consider the impact of ACEs in the decision-making process?</p> <p>Adverse Childhood Experiences and the impact of such, should be considered in the decision making process.</p>	<p>Where information in relation to ACE's is made available to Prosecutors, it will be taken into account by prosecutors at the decision stage.</p>

<p><u>Response to Question 8</u></p> <p>Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?</p> <p>The document is easy to read and provides a helpful overview regarding the prosecution of young offenders. It does not contain overly complex legal language.</p>	<p>Noted.</p>
<p><u>Response to Question 9</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on equality of opportunity across any of the s.75 categories? Are there any other comments you would like to make about this policy?</p> <p>Section 6 will hopefully have a positive impact in terms of S75 categories.</p>	<p>Noted.</p>
<p><u>Response to Question 10</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on good relations?</p> <p>There is no specific reference to young people who are lesbian, gay, bisexual or transgender. The guidance may wish to include some reference.</p>	<p>Not accepted. It is felt that the inclusion of specific references would suggest that young people who are lesbian, gay, bisexual or transgender should be treated differently to any other young person accused of committing a crime.</p>

Response to Question 11

Are there any other comments you would like to make about this guidance?

There is no mention in the guidelines of the growing body of evidence in relation to the concept of "maturity" and the recognition that this process continues into mid 20's for most males. This means that the recognition of the guidelines for children up to and including age 17 are welcome but abruptly end once a young person turns 18. Might there be scope for the guidelines to suggest a "transition phase" for those who are caught up in the Criminal Justice System as children but who continue to offend into early adulthood?

The comments have been noted, however, there is no scope for extending the guidelines for young people over the age of 18 years.

Thank you for your response.

PSNI

Comment

PPS Response

Just in relation to the new PPS Youth Policy, the document reads well, and seems to explain the processes and the linkage with PSNI well. Some small practical points for consideration listed below. In addition, is it worth considering an easy-to-read version for young people?

Information booklets are being provided. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.

1.1.2 The definition of a young person is *under 18 years of age at commencement of criminal proceedings* – should this read aged under 18 on the date the alleged offence occurred?

Not accepted. The definition as outlined is consistent with all other PPS documents and is in line with the definition used by NICTS, particularly the Youth Court.

4.3.8 What is the relevance of the reference to adults here – can young people be tried on indictment also? *in the case of adult offenders and are heard by a judge sitting with a jury.*

The reference to adults in this section is linked to the explanation of an indictable offence. Young people can be tried on indictment where there is an adult co-accused or where the offence is sufficiently serious.

4.4.1 Would this read better as *an offender's age - An offender's youth will often be an important public interest factor in favour of diversion*

Noted, but not accepted.

4.5.1 Will the reader know what NDAC is? *PPS diversionary disposals (with the exception of NDAC)*

Accepted. The document has been amended accordingly.

6.2.4 Just not clear as to what this looks like in practice – is this in addition to having an RI present at interview? *it is essential that prosecutors are aware of the interpretation of statements made by these young people to PSNI in interviews and when interpreting witness statements around behaviour.*

Prosecutors will not always have the information referred to and are dependent on others informing them of the relevant issues. If police become aware of issues when obtaining statements, prosecutors will certainly take account of the information but they have to be made aware in order to do so.

<p>7.3.1 I understand what is being said here, but does this need a line of clarity to avoid being mis-interpreted by the public as a judgement on the victim's sexual history? - <i>the sexual and psychological maturity of the victim</i></p> <p>Appendix A – Crimestoppers are listed between the police phone number and the Police website address. Is it worth adding (even in brackets) a line to show they are an independent charity who can receive anonymous information</p> <p>Could the phone numbers be changed to '101' (non-emergency) and +4428 9065 0222 (from outside UK)</p>	<p>Noted.</p> <p>The reference to Crimestoppers has been removed.</p> <p>The main PSNI switchboard number has been provided.</p> <p>Thank you for your response.</p>
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The Superintendent's Association of Northern Ireland

Comment	PPS Response
The Association has no issues to raise	Thank you for your response.

Youth Justice – Woodlands

Comment	PPS Response
<p><u>Response to Question 1</u></p> <p>The overall purpose of this policy is to provide guidance on general principles, commitments and associated working practices (e.g. how we take decisions), and to explain the standards of service expected from the PPS when a young person has been accused of a crime. In your view, does the new guidance deliver this? (If not, please explain the reasons why).</p> <p>I would say yes. The policy clearly outlines possible disposals available to the PPS in relation to crimes committed by young people.</p>	<p>Noted.</p>
<p><u>Response to Question 2</u></p> <p>The PPS is committed to ensuring that the Best Interests of the Child Principle is adhered to, and that the special considerations which apply to cases involving a young person are reflected in its working practices. In your view, do the approaches set out in the guidance align with the Best Interests of the Child Principle (i.e. is the guidance appropriate and proportionate)?</p> <p>I would agree that the PPS is committed re: best interests of the child and the approaches do align within the guidance.</p>	<p>Noted.</p>

Response to Question 3

Chapter 5 sets out information / guidance regarding our approach in cases involving Looked After Children and offending within children's homes. Do you agree with this? Are there any other approaches / options we should consider?

I think consideration re: disposal of a LAC young person is critical. Too many LAC young people have been criminalised for crimes such as criminal damage, common assault and disorderly behaviour which have taken place within a Children's Home. These vulnerable children can commit trivial crimes that if they'd lived at home the PSNI would probably not have been called. I know it's hard to strike a balance as some LAC young people will repeatedly involve themselves in volatile behaviours and there comes a point where there should be some learning on the young person's side. However being criminalised will have a significant impact on a young person's life trajectory.

Noted.

Response to Question 4

Chapter 6 sets out information / guidance regarding our approach to the consideration of mental health and learning disabilities in young people who offend. Do you agree with this? Are there any other approaches / options we should consider?

I've experienced incidents whereby young people have been admitted into Woodlands JJC and have had significant learning disabilities and or mental health issues. The frustration for me is actually

The comments have been noted, however, the issues raised are beyond the remit of the PPS.

<p>the lack of appropriate accommodation available for those young people with a low IQ and learning difficulties. I've known young people to be kept in custody for lengthy periods of time due to the time taken for relevant tests to be completed with the individual to clarify what we already knew on the young person's admission - they shouldn't have been placed in Woodlands in the first place as they haven't the capacity to consent! More resources are required to better meet this client's needs.</p>	
<p><u>Response to Question 5</u></p> <p>Chapter 7 sets out our approach to the consideration of cases involving sexual offences committed by young people. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>This is difficult in that in some cases social media has had some sort of involvement in relation to the young person's behaviour. There are instances where offences have been committed and continue to be committed by a section of young people who actually think there is nothing wrong with their behaviours e.g. inappropriate photos posted online.</p>	<p>Noted. Prosecutors are aware of the issues raised.</p>
<p><u>Response to Question 6</u></p> <p>Chapter 8 sets out our approach to the consideration of cases involving school bullying or cyber-bullying. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Yes, I feel all cases of bullying should be dealt with in a robust manner. However</p>	<p>PPS are unable to comment on PSNI time frames.</p>

<p>the consequences would maybe be more effective if they followed in a timely manner e.g. from arrest to outcome ideally should happen within three months. Unfortunately in Northern Ireland it's more like a year and three months – dreadful state of affairs.</p>	<p>PPS decisions in summary only cases involving young people are usually taken in an expeditious manner and within the time frames stipulated in the joint protocol between PSNI and PPS.</p> <p>Indictable cases will by their very nature take longer to process, however prosecutors still work closely with the PSNI to ensure decisions in cases involving young people are taken as quickly as possible.</p> <p>The PPS do have internal administrative time limits which are adhered to by staff and the information is gathered in report form and monitored by Senior Management.</p> <p>Addressing the issue of avoidable delay is a primary consideration for the PPS and the organisation is working with other criminal justice partners to ensure efficiency and reduce delay.</p>
<p><u>Response to Question 7</u></p> <p>In taking decisions, PPS prosecutors will consider the impact of Adverse Childhood Experiences (ACEs) see Annex D. In your view, is it appropriate for the PPS to consider the impact of ACEs in the decision-making process?</p> <p>Very much so. These young people have experienced so much trauma from a very young age and most often than not have parents who seriously lack parenting skills. Unfortunately most of them return to chaotic homes and/or lifestyles upon release from custody with little support and a hostile community awaiting them.</p>	<p>Noted. Information of this kind is taken into account where it has been made available.</p>

<p><u>Response to Question 8</u></p> <p>Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?</p> <p>Yes, information is clear and easy to understand. However some young people and relatives may have literacy difficulties which they won't open up to due to embarrassment.</p>	<p>Noted.</p> <p>Information booklets are being provided. These have been divided into a number of short, more accessible documents, dealing with different sections of the policy.</p> <p>A flow chart in respect of the Youth Engagement process has also been added with a view to making the document more accessible.</p>
<p><u>Response to Question 9</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on equality of opportunity across any of the s.75 categories?</p> <p>Are there any other comments you would like to make about this policy?</p> <p>Not that I noted</p>	<p>Noted.</p>
<p><u>Response to Question 10</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on good relations?</p> <p>Not sure</p>	<p>Noted.</p>

Response to Question 11

Are there any other comments you would like to make about this guidance?

Are there any other comments you would like to make about this policy?

Whilst this guidance is welcomed I feel that if the PPS, PSNI and N.I. Courts etc. worked collaboratively to speed up the process from time of arrest to court would be more beneficial. Waiting for up to a year or more and having to adhere to bail conditions such as curfew can effectively see a young person struggle to be home each night at 8, 9 or 10 is absolutely scandalous. I know I'd struggle if I was to be told to be home every night by 8pm for eighteen months.

Noted.

PPS deal with cases involving young people as expeditiously as possible and there are measures in place to avoid delay.

PPS are currently working with other criminal justice partners to address the issue of delay.

It is also important to note that bail can and will often be varied in the case of a young person who is adhering to current conditions. Applications to vary bail can be considered at various stages in the process.

Yvonne Adair - Independent

Comment	PPS Response
<p><u>Response to Question 1</u></p> <p>The overall purpose of this policy is to provide guidance on general principles, commitments and associated working practices (e.g. how we take decisions), and to explain the standards of service expected from the PPS when a young person has been accused of a crime. In your view, does the new guidance deliver this? (If not, please explain the reasons why).</p> <p>Yes, It is both comprehensive and clear. I have worked within the system and so am familiar with the YE process, but I am not sure it is easily understood by some others?</p>	<p>Noted and accepted.</p> <p>The policy has been amended to include an additional annex containing a flow chart for the Youth Engagement process.</p>
<p><u>Response to Question 2</u></p> <p>The PPS is committed to ensuring that the Best Interests of the Child Principle is adhered to, and that the special considerations which apply to cases involving a young person are reflected in its working practices. In your view, do the approaches set out in the guidance align with the Best Interests of the Child Principle (i.e. is the guidance appropriate and proportionate)?</p> <ul style="list-style-type: none"> - Yes, I believe so. I am gladdened to read of the: <ul style="list-style-type: none"> consideration given to ACEs, LAC, experience of DV etc. - need for expeditiousness / minimising avoidable delay 	<p>Noted.</p>

<p><u>Response to Question 3</u></p> <p>3 Chapter 5 sets out information / guidance regarding our approach in cases involving Looked After Children and offending within children’s homes. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Yes, see above.</p> <p>It is so important that all staff in Children's Homes are trained in the use of restorative practices, as well obviously, in the importance of trauma informed practice.</p>	<p>Noted.</p>
<p><u>Response to Question 4</u></p> <p>Chapter 6 sets out information / guidance regarding our approach to the consideration of mental health and learning disabilities in young people who offend. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Yes</p>	<p>Noted.</p>
<p><u>Response to Question 5</u></p> <p>Chapter 7 sets out our approach to the consideration of cases involving sexual offences committed by young people. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Yes. The use of restorative justice must always be considered in cases of sexual harm - facilitated by experienced and</p>	<p>Noted.</p>

<p>skilled practitioners, and with the necessary time given for preparation.</p>	
<p><u>Response to Question 6</u></p> <p>Chapter 8 sets out our approach to the consideration of cases involving school bullying or cyber-bullying. Do you agree with this? Are there any other approaches / options we should consider?</p> <p>Yes</p>	<p>Noted.</p>
<p><u>Response to Question 7</u></p> <p>In taking decisions, PPS prosecutors will consider the impact of Adverse Childhood Experiences (ACEs) see Annex D. In your view, is it appropriate for the PPS to consider the impact of ACEs in the decision-making process?</p> <p>Absolutely....children who have experienced ACEs, must be dealt with appropriately and should not be doubly harmed and discriminated by unnecessary inclusion in the formal CJ system. There are other ways of dealing with such children's difficult and damaging behaviour and the harm they have caused to others.</p>	<p>Where this information is available to prosecutors it will be factored into the decision making process.</p>
<p><u>Response to Question 8</u></p> <p>Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?</p>	

It appears clear	Noted.
<p><u>Response to Question 9</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on equality of opportunity across any of the s.75 categories?</p> <p>No response recorded.</p>	
<p><u>Response to Question 10</u></p> <p>In your view are there any aspects of this policy that are likely to have an impact (positive or negative) on good relations? - Please provide comment</p> <p>No comments provided.</p>	
<p><u>Response to Question 11</u></p> <p>Are there any other comments you would like to make about this guidance?</p> <p>I do not like the use of the term 'young offender': labelling is stigmatising and harmful. There are other terms that can be used - simply 'young people', or 'young people in conflict with the law' or 'young people who offend'. It states that NIPS is responsible for males in Woodlands - what about the females? I am pleased to see that you have emphasised the wording that should not be used, i.e. 'conviction'. It is important that all this is pointed out to All agencies within the Youth Justice System. I am also pleased to see that proceedings must continue in the Youth Court post 18 years when they</p>	<p>Accepted. The policy document has been amended accordingly.</p> <p>It should be noted that the NIPS no longer has responsibility for youths in custody.</p> <p>Thank you for your response.</p>

have already begun: important that all DJs adhere to this.	
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**The PPS would like to thank all those who
responded for their comments.**