



**Response to DoH/ DoJ Consultation on the Establishment of a Regional Care
and Justice Campus**

**Children's Law Centre
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Children's Law Centre
2nd Floor
127 – 131 Ormeau Road
Belfast
BT7 1SH

Tel: 028 90 245704

Website: www.childrenslawcentre.org

For further information contact:

Eamonn McNally eamonnmcnally@childrenslawcentre.org

Claire Kemp clairekemp@childrenslawcentre.org

Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through an on line Chatbot, REE Rights Responder and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health needs and complex physical health needs and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children with many years' experience working with and on behalf of children and young people in secure care and in the juvenile justice system, CLC is grateful for the

opportunity to make a submission to the DoH/DoJ consultation on the Establishment of a Regional Care and Justice Campus.

CLC welcome the fact that this consultation has opened up conversations between the Departments and stakeholders on how best to address the needs and protect the rights of children and young people in secure care and in the juvenile justice system. However, CLC are disappointed about the level of detail contained within the consultation document and the information contained within the document throws up more questions than it serves to answer. Detail for example on how exactly the Secure Care Centre will operate and what community provision will be in place and the timing and resourcing of same makes it difficult to provide a full and meaningful response to this consultation.

While CLC sits on the Stakeholder Reference Group on the establishment of a regional care and justice campus and agree the need for systemic change, CLC did not endorse the consultation document and proposals.

1. Current arrangements for the Provision of Secure Care and Juvenile Justice in NI

CLC view the current arrangements as not fit for purpose as they are not compliant with international Human Rights standards and therefore adversely impacting on children and young people in secure care and in the juvenile justice system. This is evidenced in reports and research such as the Youth Justice Review¹, the UNCRC Concluding Observations² from 2016, the UN Committee on the Rights of the Child NGO Stakeholder Report 2020³ and Dr Deena Haydon's report in 2016 'Protecting and Promoting the Rights of Young People who Experience Secure Care in NI'⁴.

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<https://restorativejustice.org.uk/sites/default/files/resources/files/Report%20of%20the%20Youth%20Justice%20System%20in%20Northern%20Ireland.pdf>

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En

³ <https://childrenslawcentre.org.uk/?mdocs-file=4166>

⁴ https://damgeohost1.s3-eu-west-1.amazonaws.com/CLC/webDocs/Promoting_and_Protecting_the_Rights_of_Young_People_who_Experience_Secure_Care_in_Northern_Ireland_January_2016_final.pdf

2. Case for Change

Strategic context

CLC note the range of strategic priorities, findings, recommendations and proposals emerging from recent studies and reviews and are concerned that the Youth Justice Review (2011) and the UNCRC and the UN Committee on the Rights of the Child Concluding Observations (2016) are not identified as the underpinning strategic context for this consultation.

The Youth Justice Review was undertaken as a result of commitments made within the Hillsborough Agreement to review how children and young people are processed at all stages of the criminal justice system. CLC has been raising concerns around the regression of implementation of the Hillsborough Agreement and the Youth Justice Review for a number of years. The Hillsborough Agreement is a vital part of the constitutional peace settlement in Northern Ireland, and given the commitment contained therein to review the youth justice system, its constitutional political importance must be recognised and given effect.

Since the Youth Justice Review made its recommendation in September 2011, CLC have seen that in the process of implementing the Review's recommendations, those recommendations have themselves been diluted. In some cases, we have seen a complete digression from the recommendations or a lack of action to achieve the recommendations. For example, in relation to recommendation 19, which outlines that: *'Looked after children should no longer be placed in custody, either through PACE, on remand or sentenced, where this would not have been an outcome for children in the general population'*, statistics⁵ continue to show a chronic over-representation of looked after children in the juvenile justice system.

⁵ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/yja-workload-stats-1920.pdf>

Furthermore, the United Nations Committee on the Rights of the Child, in their Concluding Observations following their examination of the UK government in 2016 stated that:

*“The Committee is concerned about: ... The practice of children being placed in secure accommodation in Northern Ireland.”*⁶

The Committee therefore recommended that:

*“Ensure that secure accommodation in Northern Ireland is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation.”*⁷

Furthermore, in relation to Juvenile Justice, the Committee expressed concern that:

- (a) *The minimum age of criminal responsibility remains... 10 years for the rest of the State party;*
- (d) *The number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care and children with psychosocial disabilities, and detention is not always applied as a measure of last resort;*
- (f) *Access to education and health services, including mental health services, is insufficient for children in custody;*
- (g) *Segregation, including solitary confinement, is sometimes used for children in custody, including in young offenders’ institutions.*

The Committee therefore recommended to:

⁶ CRC/C/GBR/CO/5 para 52

⁷ CRC/C/GBR/CO/5 para 52

- (a) *Raise the minimum age of criminal responsibility in accordance with acceptable international standards;*
- (d) *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;*
- (f) *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.⁸*

These recommendations issued in 2016 (many of which were raised by the Committee in previous examinations) and which reflect the recommendations of the review of Youth Justice, have not yet been implemented in NI. The NGO Stakeholder Report to the UN Committee on the Rights of the Child (submitted in December 2020)⁹, outlined a number of ongoing concerns such as:

“Some children are being inappropriately detained in the Juvenile Justice Centre due to lack of alternative accommodation. Some are being held on remand because they have breached unachievable bail conditions or are unable to perfect bail due to being homeless, despite social services’ duty to provide such children with suitable accommodation. Specific groups remain over-represented in custody, including children in care, Catholic children, children with mental health issues or learning disabilities....

Many in custody in NI’s Juvenile Justice Centre [JJC] have complex alcohol, drug and mental health problems. A 2015 inspection of the JJC found the rise in self-harm concerning; managers suggested this was due to increased numbers coming off drugs on entering custody – a repeated concern in the following inspection. Continuity of healthcare services is vital, especially for those requiring specialist services after release....

⁸ CRC/C/GBR/CO/5, paragraphs 78 and 79

⁹ <https://childrenslawcentre.org.uk/?mdocs-file=4166>

The age of criminal responsibility in NI remains 10 years. The impact of delay in the administration of youth justice remains concerning. Although there is a commitment to alternatives to prosecution for children within the wider youth justice system, a clear emphasis on diversion away from the formal criminal justice system remains underdeveloped. Concerns have been raised in relation to proportionality, legitimacy, effectiveness, efficiency and rights compliance regarding existing diversionary measures, particularly in relation to admission of guilt and the child's informed consent."

The report in 2016 'Protecting and Promoting the Rights of Young People who Experience Secure Care in NI'¹⁰ which was developed as part of the previous reporting process for the UN Committee on the Rights of the Child highlighted a wide range of issues that impact young people in secure care and put forward a wide range of recommendations. The recommendations included:

- *Investigate the reasons why children are repeatedly admitted to secure accommodation, or spend lengthy periods in secure accommodation, and urgently address these issues.*
- *Ensure that secure accommodation is used as a measure of last resort, for the shortest appropriate period of time.*
- *Fully investigate the relationship between substance misuse and children's mental ill-health and ensure adequate support services are in place across Northern Ireland.*
- *Urgently address the underfunding of CAMHS, ensuring that adequate funding is allocated to CAMHS provision which will meet the needs of all children at all levels including in schools, in the community, in transitioning to adult services and through the provision of services not currently available to children in Northern Ireland.*

¹⁰ https://damgeohost1.s3-eu-west-1.amazonaws.com/CLC/webDocs/Promoting_and_Protecting_the_Rights_of_Young_People_who_Experience_Secure_Care_in_Northern_Ireland_January_2016_final.pdf

CLC believe that the recommendations made by the Youth Justice Review and the UN Committee on the Rights of the Child, alongside evidence produced by stakeholders working with and behalf of young people in secure care and the juvenile justice system should provide the foundation for any proposals taken forward to reform juvenile justice and secure care in this jurisdiction.

Views of children

The consultation timeframe running over the Christmas holidays, followed by a strict lockdown in Northern Ireland has made it difficult for stakeholder organisations such as the Children’s Law Centre and others to meaningfully engage with children and young people on these proposals.

CLC note that the views of some children were sought at the review stage and as part of the development of design proposals stage, however, there is no detail in regards to Departments’ engagement with children and young people on the final proposals. The Equality Commission’s guidance on consulting with children and young people, *“Let’s Talk, Let’s Listen”*¹¹ highlights the need for **ongoing** engagement with children and young people when developing a policy to ensure compliance with both section 75 of the Northern Ireland Act and Article 12 of the UNCRC.

The Equality Commission’s guidance also outlines public authorities’ duties under section 75 of the Northern Ireland Act, highlighting that children and young people have particular needs concerning information and to take part in consultation and decision-making processes, especially on issues that affect them:

“You should also make sure that you provide information which is clear, easy to understand and in an appropriate format, to make sure there are no problems preventing you from consulting children and young people.”

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<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/LetsTalkLetsListenGuideforPAsconsultingchildren2008.pdf?ext=.pdf>

The publication of the child-friendly information in relation to this consultation was issued later than the 'full' consultation document, thereby increasing barriers to participation for children and young people.

3. A Regional Care and Justice Campus – Overview

CLC are concerned that the proposals contained within the consultation document focus heavily on the existing structures already in place, rather than a comprehensive, wide-ranging and meaningful examination of what services are required and where, in order to provide a service framework that is both fit for purpose and in the best interests of children and young people.

Additionally, the consultation document fails to provide any detail on how the two different regimes (i.e., Lakewood Secure Care and Woodlands JJC) will be integrated, nor is there any detail on how the two populations will mix within the new Regional Care and Justice Campus. We would seek details as to the programs which will be available to both groups of young people, how the diverse needs of these young people will be met and how any impact upon each group will be mitigated.

CLC note that the *"intention is that all parts of the Campus will have access to existing community-based services operating in a coordinated way to respond to the needs of children"*. CLC would assert that existing community-based services are not sufficient for the needs of children and young people in this jurisdiction and therefore an extensive examination of what community-based services are currently being offered, what the needs of young people are and where new community-based services need to be installed needs to be undertaken before any further development of these proposals can take place.

Furthermore, there needs to be a dramatic increase in funding for community-based services for young people in NI. By way of example, children and young people make up approximately 25% of the population in Northern Ireland and an estimated 27% of children and young people have mental health needs, yet the budget for Children and Adolescent Mental Health Services stands at 8.9% of the total mental health budget.

It is imperative that CAMHS is properly resourced to ensure that service provision meets the needs of children and young people in this jurisdiction. Without adequate funding for community-based services for children and young people in Northern Ireland, the objective of the Regional Campus and the aim to reduce the number of children entering secure accommodation will ultimately fail.

Critically, the consultation document does not take any cognisance of the minimum age of criminal responsibility in Northern Ireland, which at 10 years old is one of the lowest in the world.

The United Nations Committee on the Rights of the Child has repeatedly said that the minimum age of criminal responsibility in the UK is not compatible with the government's obligation under international standards of juvenile justice and the UN Convention on the Rights of the Child. The Youth Justice Review echoed a similar sentiment.

The UN Committee on the Rights of the Child has urged the UK government to give serious consideration to raising the age of criminal responsibility. In its 2008 recommendations, the Committee concluded that: *"a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable"*. The Committee recommended the age of 12 *"as the absolute minimum age"* and that State parties should *"continue to increase it to a higher age level"* such as 14 or 16 and the then Chair of the Committee, when delivering the CLC's 2008 Annual Lecture, recommended the raising of the minimum age of criminal responsibility in this jurisdiction.¹²¹³ In 2016, the Committee again urged the UK government to *"raise the minimum age of criminal responsibility in accordance with acceptable international standards"*.¹⁴

¹² The general philosophy behind this approach is explained in the official commentary to the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) Rule 4

¹³ Professor Yanghee lee, 13th March 2008, Children's Law Centre Annual Lecture, 'The Convention on the Rights of the Child – from Geneva to NI, Bringing Children's Rights Home'

¹⁴ CRC/C/GBR/CO/5

The proposals contained within this consultation document also raises other issues which are not addressed, for example, if a decision is made that a child younger than 10 requires access to the type of service provision it is envisaged will be provided on the Campus, how will that child be accommodated and managed alongside older children who have arrived at the Secure Care Centre via the justice route of admission?

4. The Secure Care Centre

It is unclear from the consultation document what the principal purpose of this facility will be. There is no clarity on how the two regimes will be integrated, what the staff profile will be or how the two populations will mix on Campus. Further detail is required on how the two different regimes with their own identities and culture can be amalgamated into one new service provision.

CLC note that it is proposed that “*consistent standards will apply across both facilities*”, does this infer that there will still be two separate facilities? Notwithstanding, the creation of the Campus from two distinct entities with two different operating regimes, cultures and different legislative frameworks and regulatory frameworks, raises questions about the status of the children and young people placed there, which are not adequately addressed in the consultation document.

CLC ask that the Department of Health and the Department of Justice provide clarity, as a matter of priority, on how they envisage the Secure Care Centre to run on a day-to-day basis.

CLC would also seek clarity and detail on how it is envisaged that the Secure Care Centre will meet the needs of young people, particularly those needs that are not well met in the current system, for example, service provision in relation to drug and alcohol use.

Many children within the JJC/ Secure Accommodation have complex alcohol, drugs and mental health problems which makes them particularly vulnerable. Continuity of

healthcare services is vital, especially for children who require specialist services after release. Such community based services are currently very limited. If the proposals are to have any chance of success there needs to be considerable and contemporaneous investment in the development of these community based services.

There is no dedicated in-patient facility for young people with drug and alcohol issues in Northern Ireland. Many of the young people CLC has worked with have been treated through a mixture of community services and for some who have a co-occurring mental health issue, at the Beechcroft Unit. Unfortunately, some young people, who do not have a diagnosable mental health issue and are therefore not suitable for treatment at the Beechcroft Unit, fit the criteria for secure accommodation at Lakewood. Whilst this provides them with a safe environment it does not give them access to the range of services for drug and alcohol issues that they require and it deprives them of their liberty because of a paucity of appropriate health provision. Were there adequate health care facilities in the community or other health facilities, these young people would not be deprived of their liberty, this 'but for' scenario i.e. is not in the CLC's view compliant with Art5 ECHR vis a vis deprivation of liberty. Other children with drugs and alcohol issues find themselves in Woodlands JJC.

It is therefore very likely that young people with drug and alcohol issues will be admitted to the new Regional Campus and possibly in relatively significant numbers. The consultation document does not provide any discussion of this possibility or indeed what services will be available to young people with substance misuse issues to the Campus.

The Mental Capacity Act (NI) 2015 has received Royal Assent and has been commenced. Currently for those over the age of 16 there is in place a dual system of either detention to hospital under the Mental Health (NI) Order 1986 or the Mental Capacity Act (NI) 2016. Later this year the use of the Mental Health Order for over 16s will cease. This means that in order to detain a person over the age of 16 to a mental health hospital for assessment or treatment of a mental illness it will have to be established that there is a lack of capacity. There will therefore be a number of

16/17 year olds who have capacity but who require treatment for a mental illness who will not be detainable to hospital under the Mental Capacity Act. It is however likely that these young people will fulfil the criteria set out under Article 44 of the Children (NI) Order 1995 and whilst it is not intended that these young people should be admitted to the campus it is possible that they will in the absence of a suitable alternative. This means that the campus will be required to care for this cohort of young people and mitigate the impact of their admission on the other residents of the campus.

Places of Safety

The 'Place of Safety' designation has significant implications for the proposals in the consultation document. The fact that the JJC is so designated is currently the route whereby a significant number of young people enter the JJC especially LAC e.g. the PSNI are called to a residential unit as result of some action which may constitute a criminal offence and the unit refuses to allow the child to remain in the residential unit pending a court appearance, the PSNI will in the absence of alternative provision rely on the 'Place of Safety' designation to place the child in the JJC. Given CLC's experience over very many years, and despite assurance that the practice will desist, should the Regional Campus be designated a Place of Safety, in the absence of alternative provision, CLC strongly believe a significant number of children, especially LAC, will be placed in the Secure Centre using this power. Currently children placed in the JJC as a place of safety are usually released after a few days. If the designation continues the impact of a significant number of revolving door short term admissions will undermine the proposals in this consultation. To mitigate this impact there needs to be legislative reform, the proposed new secure care centre should not be designated as a 'place of safety' and alternative 'place of safety' provision should be urgently created to meet the needs of the profile of young people currently placed in the JJC by virtue of it being designation a place of safety.

During the development of the Mental Capacity Act (NI) 2015 (MCA) it was proposed that the PSNI should retain the power to remove a person from a public place to a place of safety. CLC acknowledges that this is a necessary power and the value of it

for some young people is recognised. The issue however is what facilities are designated as a 'Place of Safety'.

The MCA retained the pre-existing list of places of safety, including hospitals and police stations. The JJC was also named as a place of safety for the purposes of the MCA. As the JJC is joined into the Regional Campus, the Campus would therefore be a place of safety for those with mental health needs unless as suggested above this designation is removed and alternative more appropriate accommodation provided. It is unclear what services will be available to these young people with mental ill health who enter the campus under the place of safety powers.

Article 44 of the Children (NI) Order 1995

Article 44 of the Children (NI) Order 1995 sets out the provisions for entry to secure accommodation. It is proposed to continue to use Article 44 of the Children Order for access to the campus.

Article 44 states:

44.—(1) In this Article “secure accommodation” means accommodation provided for the purpose of restricting liberty.

(2) Subject to paragraphs (3) to (10), a child who is being looked after by an authority may not be placed, and, if placed, may not be kept, in secure accommodation unless it appears—

(a)that—

(i)he has a history of absconding and is likely to abscond from any other description of accommodation; and

(ii)if he absconds, he is likely to suffer significant harm; or

(b)that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

Any deprivation of a child's liberty must be in compliance with Article 5 of the ECHR. This specifically limits the conditions upon which an infringement of Article 5 ECHR can be lawful, these are:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Therefore, in order to comply with Article 5 ECHR, any application for secure accommodation under Article 44 of the Children Order must be for one of the reasons above. In respect of the proposed new secure care centre the children must be admitted in an Art 5 compliant way i.e. either through the criminal justice process or otherwise it must be 'by lawful order **for** the purpose of educational supervision' i.e. any application under Article 44 of the Children Order must be **for** the purpose of educational supervision.

Notwithstanding that the Court found that on the facts of the case deprivation of liberty was compliant with Art 5 (1) (d) in Koniarska v The United Kingdom, the ECtHR held that an order for secure accommodation under Section 25 of the Children Act 1989

(the Children Order equivalent of Article 44) constituted a deprivation of liberty within the meaning of ECHR Article 5. Therefore, in every fact circumstances a secure accommodation order under Art 44 must satisfy the requirements of Article 5 as well as the protections against deprivations of liberty under other international human rights treaties including the UNCRC.¹⁵

The ECtHR has been clear that any interpretation of Article 5 ECHR must be a strict interpretation. It is clear that Article 44 could be subject to challenge as it fails to include education supervision as a category for secure accommodation in line with Article 5 ECHR.

In Blokhin v. Russia, the Court held that the applicant's detention did not fall within Article 5(1)(d) as *'the applicant's detention in the centre had not been 'for the purpose of' educational supervision'* and "any education which was offered was purely incidental to the main reason" for his detention, and 'he had been placed there for "behaviour correction" ¹⁶ Therefore, when considering admission to the campus legislative reform of Article 44 is required in order to bring it into compliance with Article 5 ECHR.

We would suggest that the Campus will require its own separate legislation and that Article 44 should not be used in the future.

5. Multi-Agency Panel

It is proposed that there will be a regional independently chaired Panel to consider admissions to the Campus. The Independent Chair of this Panel is to work closely with the Head of Operations in the monitoring and decision making in respect of admissions and discharges to the Secure Care Centre and across the Campus. The Head of

¹⁵ Alternative Care and Children's Rights in Northern Ireland

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Operations will retain ultimate responsibility for the management and operation of the Secure Care Centre.

The approach of a single multi-agency panel to replace the previous system of each Health and Social Care Trust operating its own admissions panel to secure care is a welcome advance as this may bring a level of consistency to decision making. The Independent Chair however comes from within the Health and Social Care system and this may create the perception for young people that the Chairperson is part of the “system” as opposed to being independent. As this is an administrative process closely linked to deprivation of liberty and in relation to which Art 6 ECHR is engaged, it is imperative that not only is it asserted that the process is independent but that it is seen to be independent. Critically the young people need to be reassured of the independence of the role.

The Panel will also be able to consider alternatives to secure care, prevent inappropriate admissions, minimise unnecessary placement moves, monitor in-centre care. However, it is unclear whether the powers of the panel will go beyond making recommendations or if the panel will be able to make decisions binding upon the Trusts. If the panel considers that admission to the Campus is not justified and recommends a service be put in place as an alternative there must be some mechanism of ensuring that this service happens for the young person otherwise the failure to provide the service might actually result in the young person being admitted to the Campus.

The Panel will have a monitoring role and it is proposed that the Panel, through the Independent Chair, will have a role in working with the Head of Operations to ensure that an individually-tailored care plan is in place for each child or young person, and that this is kept under regular review during a child’s stay in the Secure Care Centre through to discharge. We would welcome more detail on how this monitoring role will operate, how planning will take place for the young person during their time in the Campus and how plans will be made with the placing Trusts to ensure that the child is

successfully transitioned back out of the Campus with the full package of support required to meet their needs including accommodation. .

The consultation document recognises that decision-making by the Panel is significant and that the proposals raise questions around the responsibility for and management of children who the Panel decides should not be admitted to the Secure Care Centre and as a consequence that the panel requires a statutory basis. We would be keen to see what this statutory basis would be and to be able to comment on the statutory functions of the panel.

The consultation document also states that the Panel will also encourage and facilitate the attendance of the individual child at the Panel alongside a competent advocate. We believe to date that young people are not facilitated to attend the Panel. Further we understand that the chair of the Panel meets with the young person prior to the Panel meeting to discuss matters and then feeds back to the remaining panel members. This process is not compliant with Article 6 ECHR – the right to a fair hearing and will likely be the subject of legal challenge. The Panel appear to be the key decision-making body in relation to whether application is made to court under Article 44 of the Children (NI) Order 1995 and as such full and meaningful participation by the young person is necessary in order to comply with Article 6 ECHR. The panel is making a decision which has the potential to deprive the individual of their liberty which engages Article 5 ECHR, therefore it is essential that young people are given the opportunity to be involved in the complete panel process, to be represented at all stages of the process and have access to independent legal advice and representation if they wish to do so in addition to access to advocacy services.

6. Services in the Campus

A therapeutic approach in the Campus is welcome. We would however request further details on what this therapeutic framework will look like.

The consultation states that within the Secure Care Centre, in conjunction with other relevant standards, the framework will help identify organisational commitments and

care and the treatment delivery standards necessary to ensure that the care provided at the Centre is person-centred and therapeutic. It goes on to state that there will be an emphasis on relationship-focused work that will provide the basis for securing safety and stability for the child, building an understanding of the child's presenting needs and putting in place the types of supports and intervention that will facilitate a return to community-based services within the shortest timeframe possible. We would request details of what services will be available within the Campus, how young people will access these and how referrals will be made back into the community setting. We would wish to see robust services for substance misuse, mental health and general physical wellbeing. However, there must be a robust system for ensuring that services continue once a young person returns to live in the community. Failure to do so will result the continuation of the revolving door process that currently exists. This may be a role for the regional panel process.

For those children placed in the Centre for a longer period of time it is proposed that the regional Care and Justice Campus alongside all settings for looked after children will adopt a new regional Framework for Integrated Therapeutic Care. This new framework requires to be separately consulted upon.

It is proposed that this new framework will establish a multi-disciplinary team in the Secure Care Centre to co-ordinate the development and implementation of a holistic therapeutic plan for each child. It is unclear if this will require additional staff or how this will interplay with existing staff of both centres.

We would further seek details of what education and training will be available for young people within the campus and how this will dovetail with training and education upon leaving the centre. Currently both sites have different approaches to education and it is unclear how these will be blended in the new Campus. It is also unclear what input there has been from the Education Authority and the Department of Education in the development of this Campus plan. This is an essential element given the need for compliance with educational supervision under Article 5 ECHR.

It is not proposed that the Campus should provide secure mental health beds within its framework but that this will be aligned with existing inpatient mental health services. We would seek some clarity on this proposal. It has long been recognised that NI requires a medium secure unit for young people, it was the subject of evidence given to the ad hoc Committee on the Development of the Mental Capacity Act by both CLC and the Royal College of Psychiatrists. However, it would appear that an opportunity is being missed to fill the gap in service provision by not including secure mental health beds within the campus and it is not clear how these would fit into existing mental health service provision which is currently low secure. The Review of Regional Facilities recommended the establishment of a workstream to undertake an analysis of the need for secure mental health beds, and following from that exploring what provision might be appropriately commissioned and provided on the site of the campus. CLC would welcome details of what work has been undertaken to give effect to that recommendation.

The consultation documents state that it is proposed that children within the Secure Care Centre will have access to a range of education and training which will provide them with opportunities to develop existing or new skills, and enable them to reconnect with education or training when they leave the Centre. We would seek clarity as to what education and training provision will be available, how this will be provided and by which agency. To guard against discrimination and inequality of opportunity, it is imperative that children in the Campus have full access to the education curriculum including full access educational services up to and including sitting exams.

Further we would seek clarity as to how these education and training services will continue once young people leave the Regional Campus, i.e., what arrangements will be made with the Education Authority for continued training/education for these young people.

7. A Needs-Based Approach

It is proposed that young people will continue to enter the Campus either under Article 44 of the Children (NI) Order 1995 or through the criminal justice route. It is also proposed that the access point to the Campus will not result in the residents

being separated within the Campus. The consultation document however does not provide in-depth detail as to how the various populations within the campus will be mixed, how services will be decided for each group, how the diverse needs of each group will be mitigated and how risk will be managed in the rare circumstances where the young person has committed a serious offence. In respect of the latter the isolation of the individual child effectively placing them in solitary confinement is not compliant with Art 3 ECHR or the UNCRC. .

We welcome the proposal that any decision about where a child will be placed within the Centre will be based on a comprehensive assessment of their needs and any risks that may be posed to them or by them.

It is proposed that assessments are done collaboratively with young people and families and informed by the professionals involved with the child, the views of the multi-agency Panel, the multi-disciplinary team and staff within the Secure Care Centre. We would request further details about what services will be available to young people within the campus, how the programs will be developed for these young people and how being in the campus for different periods of time and for different needs will be allowed for. We would also seek clarity as to how these services will continue once the young person has left the campus.

8. Leaving the Secure Care Centre – Discharge/ Exit Planning

We agree with the assertion in the consultation documents that no child should remain in a secure placement for longer than is necessary, and every child will remain in a secure placement only for as long as the criteria for admission continue to apply, or for the length of any court-mandated period of remand or sentence. We would be keen to ensure that the campus prepares young people for return to community living and gives them the skills and support including accommodation to prevent a readmission. We would wish to see the detail of what is proposed for community provision including accommodation, how this will be resourced and timescales for the creation of same. We would also be keen to see this provision

spread across all Trust areas so that it is fully accessible to all young people who require the service.

The consultation document states that the development of discharge plans will be subject to monitoring by the Multi-Agency Panel. We would wish to see some detail of this monitoring role, and seek assurances that recommendations of the panel will be binding upon placing Trusts. It is difficult to see how, in the absence of everyone in the Campus being considered a looked after child, this planning process for community-based services could be fulfilled. As in CLC's experience failure to cooperate including between Trusts is a major obstacle to service delivery for children, we would be grateful for details as to how the monitoring role will ensure the statutory duty to cooperate is discharged in respect of community-based service provision.

CLC is aware from its own casework of the limited supply of appropriate accommodation for certain groups of young people. If step down facilities are to work then it is essential that appropriate accommodation is commissioned with appropriate supports in place. The absence of appropriate accommodation in the community is currently resulting in serious breaches of children's rights, the commissioning of appropriate accommodation must therefore be expedited and cannot wait for the full roll out of the Campus.

9. Satellite Provision and Step-Down Unit

CLC support the proposal that a plan will be in place to support discharge from the Centre and that planning will begin at the point of admission. It is vital that consistent, high quality support is in place before, during and after time spent in the Secure Care Centre. CLC would reiterate the need for well resourced, fit for purpose community-based services to ensure that in the first instance young people do not have to enter the Secure Care Centre and for those that do, to ensure that they are supported after they leave the Secure Care Centre.

CLC note that it is proposed that a step-down facility, located on the same site as a Secure Care Centre, will form part of the Care and Justice Campus satellite provision. While there is some value in having a step-down facility on the same site as the Secure Care Centre, exit planning and support would be greatly enhanced by providing intensive support in the young person's local community, where it is most needed. Further this would also ensure their ECHR Art 8 rights are vindicated. CLC would seek further detail and clarity in relation to the resources, proposed or available, to place a step-down facility on the current Woodlands/ Lakewood site.

CLC are supportive of the proposal of community-based satellite provision, however, investment is fundamental in order to meet the often-complex needs of these children and young people. Such provision does not currently exist and CLC is challenged as to how current provision can be repurposed to meet this need without having a negative knock on effect on other children. The consultation document refers to the community-based satellite provision as *"a mixed economy of residential provision and improved more coordinated ways of working to respond more effectively to the needs of children and young people"*. The consultation document is silent on whether residential provision has already been identified within the existing stock or if additional accommodation will be built or acquired in order to support community-based satellite provision. CLC are acutely aware, through our own casework, that there is a lack of suitable accommodation for young people in this jurisdiction. CLC would remind the Department of Health and the Department of Justice that any accommodation provided needs to be within the definition of Article 21 of the Children (NI) Order 1995 i.e., suitable and appropriate. Further detail on this point is provided under the Legislation heading of this response.

10. Governance and Accountability Arrangements for a Regional Care and Justice Campus

Robust governance and accountability arrangements for a Regional Care and Justice Campus are essential to ensuring it offers the correct support to young people in the long term. CLC are of the opinion that focus of the Centre must be on providing a caring and supportive environment for all the young people resident there, irrespective

of their route of admission. Therefore, we recommend that a multi-agency partnership board be put in place to ensure that young people receive the support required, and delivery partners can be held to account (Option 2 of the consultation document). It is important that the Department of Health has a lead role in overseeing the operations of the campus, with accountability structures put in place, supported by the Department of Justice and the Department of Education. There needs to be cross-departmental and independent accountability.

More detail on the role, expertise and responsibility of the Head of Operations is required, as is further thinking on the staffing of the centre and satellite services. CLC believe that the parental responsibility for young people resident in the Centre should not lie solely with the Head of Operations, but should be shared with the placing HSC Trust, as applicable.

11. Legislation

The consultation document recognises that the new campus proposals will require a legislative programme to support the establishment of the regional Care and Justice Campus.

Lakewood Secure Care Centre is categorised as a children's home within the meaning of Article 9 of the Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003. Woodlands JJC is classified as a juvenile justice centre within the meaning of Article 51 of the Criminal Justice (children) (NI) Order 1998.

If these are to operate as a single entity then it is unlikely that either statutory categorisation will be appropriate and it will be necessary to reclassify the campus. The consultation document does not provide consultees with any guidance as to either Department's thinking in relation to the reclassification of the campus. It is important that legislative difficulties do not result on essentially two facilities running under the umbrella of the campus.

The consultation document provides that satellite provision and step-down unit satellite provision may incorporate other residential provision, for example designated children's homes and supported accommodation. It is not proposed to alter the classification of existing children's homes, although it is accepted that children's homes will need to be resourced to enable them to effectively support the preventative and improved re-integration aims of the Campus. It has been the experience of CLC that there are limited accommodation options available for young people who are leaving the JJC and not returning home or to return to a children's home.

The satellite provision will not work unless additional suitable and appropriate accommodation is resourced with sufficient supports in place for residents. There is a need for such accommodation already within the system and for any proposal for satellite accommodation to work it must be suitable and appropriate accommodation within the meaning of Article 21 of the Children (NI) Order 1995.

All children admitted to the Campus should be treated as children in need within the meaning of Article 17 of the Children (NI) Order 1995. This in turn would trigger the general duties under Article 18 of the Order to assess and provide for those children. The consultation document suggests that the Children's Services Cooperation Act 2015 could be used to promote cooperation between agencies to contribute to better outcomes for young people using the satellite provision. Given the widespread failure to date on the part of duty bearers to give effect to their duty under the Children's Services Co-operation Act 2015 CLC would welcome details as to how discharge of this duty will be monitored and ensured. This co-operation duty may not be strong enough to achieve the desired outcome of the consultation, including in relation to cooperation vis a vis resources, and there may be a requirement for separate regulations in relation to the multi-agency approach of the satellite provision on offer. There will certainly be a requirement for a monitoring role in relation to the satellite provision offered.

If the multi-agency panel is to have a monitoring role of the continued need for admission to the campus then it will require some statutory powers to deal with

situation whereby it makes a decision with which the placing Trust is in disagreement. The panel must have the ability to make a binding decision upon the placing Trust. The panel will require legislation in order to be able to function and to carry out admission, monitoring and discharge decisions.

12. The Legal Status of Children and Parental Responsibility

The creation of the campus from two distinct entities with two different operating regimes and different legislative frameworks raises questions about the status of the children and young people placed there.

All children placed in Lakewood Secure Care Centre are looked after children as defined by Article 25 of The Children (NI) Order 1995. Children detained in Woodlands JJC are not automatically looked after children but Article 53 of The Criminal Justice (Children) (NI) Order 1998 means that the manager of the JJC has parental responsibility for residents.

The consultation document makes it clear that it is proposed that those who were looked after prior to entering the Secure Care Centre will continue to be looked after; however, it is not proposed to make all children looked after when they are admitted to the Centre. This will mean that not all children in the Centre will have the same legal status or legal entitlements.

This may cause some confusion for young people themselves but also present some difficulties regarding the planning process for exiting the campus. Whilst it is not necessary that all young people entering the JJC are automatically LAC it has been the experience of CLC that some young people could benefit from LAC status and it has been necessary for some young people to be accommodated under Article 21 of the Children (NI) Order 1995 and as a result become LAC. It may be worth considering the position as outlined in the Children Order for young people who are in hospital for a period of 3 months – i.e., they become looked after by virtue of having been in hospital for a period of 3 months. A similar position might be considered for young people who are 3 months or more in the campus.

It would appear to be a sensible proposal of the consultation document that the Head of Operations of the Secure Care Centre will obtain parental responsibility for any child who was not looked after prior to entering the Secure Care Centre.

Possible options are outlined in the consultation paper that for the looked after population once admitted to the Secure Care Centre include: I. the placing HSC Trust solely retains parental responsibility; II. the parental responsibility passes fully to the Head of Operations of the Secure Care Centre; or III. the placing HSC Trust and the Head of Operations share parental responsibility.

The third option would appear to be the best position for young people in that the placing Trust will retain responsibility for the young person and at the same time the Head of Operations will acquire it. This would be key in ensuring the best planning for young people leaving the campus and to ensure continuity planning during admission.

13. Equality and Human Rights

The Children's Law Centre believes that the implementation of section 75 of the NI Act 1998 is one of the most significant developments in the promotion of equality in this jurisdiction.

Direct consultation with children and young people

Central to compliance with the statutory duties imposed under section 75 is the concept of increased participation in policy making and development. The Equality Commission's guidance¹⁷ states that consultation must be meaningful and inclusive, in that all persons likely to be affected by a policy should have the opportunity to engage with the public authority. It also states that targeting consultation at those most affected by particular policies is also beneficial, in terms of identifying any adverse impact of policies or proposed policies at the earliest possible stage.¹⁸

¹⁷ 'Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010, p.14

¹⁸ Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities' Equality Commission for Northern Ireland, April 2010 p. 38 and 39

As outlined above, CLC note that the views of some children were sought at the review stage and as part of the development of design proposals stage, however, there is no detail in regards to engagement with children and young people on the final proposals.

In failing to consult directly with children and young people on the final proposals, the Departments have not only breached their own Equality Schemes they have also deprived themselves of the opportunity to be fully informed when developing these proposals.

CLC would welcome details of any direct consultation with children and young people that the Department of Justice and the Department of Health has carried out, or intends to carry out on the final proposals as outlined in the consultation document.

Such consultation is essential not only in ensuring compliance with section 75, but also in ensuring the Government's compliance with Article 12 of the UNCRC (respect for the views of the child). In examining the government's compliance with Article 12, the UN Committee on the Rights of the Child recommended that the government:

“Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national levels, including in relation to discrimination, violence, sexual exploitation and abuse, harmful practices, alternative care, sexual and reproductive education, leisure and play. Particular attention should be paid to involving children and children in vulnerable situations, such as children with disabilities.... [and] ensure that children are not only heard but also listened to and their views given due weight by all professionals working with children.”¹⁹

CLC accept that during the consultation period, it may not have been possible to consult with young people face-to-face because of the current COVID-19 restrictions, however, online methods to consult directly with young people could be employed.

Use of data in Equality Screening

CLC note the use of some data within the Equality Screening Form, however CLC are concerned that in relation to the paragraph that ‘children in secure facilities have many

¹⁹ CRC/C/GBR/CO/5 para 31 (a) and (d)

complex needs, including learning disabilities, communication difficulties and mental health problems', the Equality Screening lists a number of documents, rather than extrapolating out the data, disaggregated under section 75 groupings.

Furthermore, CLC note that information on young people in custody in relation to religious belief is provided, but that the same information is not available for children admitted to Lakewood Secure Care Centre over the same period. Given that there has been a statutory duty to collect this information for over 20 years, CLC are at a loss as to why this information is not available. The same applies under the 'sexual orientation' category in the screening document.

CLC note the screening document states that the Review of the Youth Justice System in NI found no evidence of a particular race or ethnicity being over-represented in the youth justice system in NI. There should be up to date, disaggregated data provided in this section, particularly given that the Youth Justice Review is now 10 years old. CLC further note that 7% of looked after children in NI are a variety of ethnicities, including mixed race, Irish/ Roma Traveller, Black, Chinese, Pakistani, mixed and other ethnic groups. Given that the 2011 Census outlined the general population from NI to be 98% white and 2% made up of Irish/ Roma Traveller, Black, Chinese, Pakistani, mixed and other ethnic groups, CLC would assert that at 7% young people from non-white ethnic backgrounds are disproportionately represented within the Looked After Children population.

In relation to Part 2 of the Screening document, CLC note that in regard to policy impact, the Departments have concluded that there is "none expected" under the racial group and sexual orientation categories. We also note that in relation to religious belief and disability that a positive impact is expected, with a minor level of impact. Given data over many years evidences the clear over representation in the JJC population of children from a catholic background alongside the failure of the consultation document to directly address this issues, CLC are challenged as to how the screening document can assert that the policy will have a positive effect in respect of religious

belief.²⁰ Further it is not possible to conclude that the policy impact for section 75 categories based on incomplete data.

It is insufficient to make an equality screening decision without using data including independent disaggregated data to provide evidence for the decision. To fulfill its statutory duties under section 75 and before this policy is progressed CLC would assert that the DoJ and DoH should gather relevant disaggregated data and carry out a full EQIA, including consulting directly with children and young people. Failure to do so constitutes a breach of the DoJ's and DoH's Equality Scheme.

Purpose of Equality Screening

The Equality Screening document states that *"the policy proposals being consulted on are aimed at improving outcomes and promoting equality of opportunity for a small but vulnerable group of children and young people, irrespective of any particular Section 75 category."*

The fact that the proposals will be applied equally across all section 75 groups is a concerning misunderstanding of the Departments' duties under section 75. It is irrelevant that the proposals apply equally for the purposes of compliance with Departmental obligations under section 75 of the Northern Ireland Act 1998 and proper discharge of its Equality Scheme. The question the Departments should have asked was whether or not there is the potential for differential adverse impact and if that potential exists, as CLC strongly believes it does in respect of this policy, a full EQIA must be carried out. This principle is set out clearly in the 2004 Final Report of the Equality Commission's Investigation under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 – Children's Law Centre and the NIO, the Equality Commission stated that:

"...the purpose of screening, as set out in the Commission's Guide to the Statutory Duties, is;

²⁰ <https://www.irishnews.com/news/northernirelandnews/2019/07/01/news/catholic-children-three-times-more-likely-to-be-locked-up-1652854/>

“to identify those policies which are likely to have a significant impact on equality of opportunity...”

The Commission did not accept that the... reasons for not undertaking an Equality Impact Assessment, which focused on the reasons for adverse impact and the fact that such impact was not intentional, rather than the potential for adverse impact, represented a proper consideration of whether the policy was likely to have significant impact on equality of opportunity.

It is necessary but not sufficient to establish whether a proposed policy is ‘targeted’ at a s75 sub-category such as children and young people. It is also necessary to establish ‘inadvertent differential impact’. It is not adequate to deny significant differential impact if a majority of those likely to be affected are 17 or younger (and in some cases as young as 10)....”.²¹

We are very concerned that 16 years after the Equality Commission produced the above referenced SDI Report, NI Departments is still misapplying this test when determine if there is a need to carry out a full EQIA. It is particularly concerning that the DoJ, who carry the functions of the NIO in this instance, have not given effect to the Equality Commissions finding in this regard.

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. The Equality Commission’s Guidance for public authorities in relation to section 75 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 – indeed such action may be an appropriate response to addressing inequalities.”²²

²¹ SDI/22/04.

²² Equality Commission’s Guidance for public authorities in relation to section 75
<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75GuideforPublicAuthoritiesApril2010.pdf>

Designated public bodies are therefore 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 among members of the nine groups. This means that there is a statutory obligation on the Departments as designated public authorities for the purposes of section 75 of the Northern Ireland Act 1998 to take action to mitigate adverse impact or inequality as well as to proactively promote equality of opportunity in order to comply with section 75 of the Northern Ireland Act 1998. CLC would disagree with the decision that the impact on grounds of religious belief, gender and disability is 'minor' and with the decision that impact on the grounds of racial group and sexual orientation is not expected. CLC would assert that the proposals to mitigate adverse impact are wholly inadequate to address adverse impact. The DoJ and DoH have therefore breached their Equality Schemes in this respect i.e., by failing to promote equality of opportunity.

Screening decision

The Screening document states that:

"...the overall impact has been assessed as minor and is not considered that the policy needs to be subjected to a full equality impact assessment."

We do not agree with the DoJ and DoH's screening decision, we believe the way in which the Departments has carried out its screening is flawed, particularly given the absence of up to date, disaggregated data on all of the section 75 groups.

CLC would request that the Department of Justice and the Department of Health would properly discharge their section 75 duty and comply with their Equality Schemes and carry out a full EQIA using comprehensive disaggregated data sets and accessible information. The DoJ and DoH must also consult publicly and widely, including direct consultation with children and young people on the final proposals as part of this process.

European Convention of Human Rights

As outlined under section 4 of this response, CLC believe that Art 44 of the Children's (NI) Order is outdated and requires a full review in order to be compliant with Art 5 of the ECHR. As per above we also assert Art 6 is engaged in respect of the Panel process. Art 8 is also engaged vis a vis the location of the Campus especially for children who come from areas a considerable distance from Bangor. Measures must be put in place to ensure there is not breach of the child's right to private and family life.

14. Rural Impact

In relation to the Rural Needs Impact Assessment, CLC note that the Departments state that *"rurality has not been a significant contributory factor"*. CLC would assert that rurality not being a factor is not what should be considered here, but rather how young people from rural areas can be supported where there is adverse impact or potential for adverse impact. For example, if family contact is considered vital in terms of therapeutic support package whilst a young person is in the Regional Care & Justice Campus, then consideration needs to be given in terms of supporting the family with transport costs and/or accessing technology to keep that support mechanism going on a regular basis. Art 8 ECHR is also engaged in relation to rural impact.

Secondly, we note that many of the proposals are based on the provision of effective and coordinated community-based services as an alternative to a secure placement. It is imperative that the service levels in each area are adequate to meet the needs of young people in their locality, including rural areas. CLC would welcome a thorough assessment of what community services are currently available in each area, what the waiting list for each service is and what additional services are required in each area to ensure that service provision is meeting the needs of young people all over NI.

It will also be important to consider how rural young people will be able to access community-based services. For example, if a young person living in Fivemiletown is accessing services in Dungannon (a 50 mile round trip), there may be implications for how regularly that young person can attend, depending on public transport and family

access to a car. Consideration will need to be given in order to mitigate this adverse impact.

Conclusion

CLC is grateful for the opportunity to respond to the Department of Health's consultation on the establishment of a regional care and justice campus. We hope you find our comments constructive, we look forward to receiving the information requested and we look forward to further engaging with Departmental officials in relation to the issues raised in this response.