



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT (Hansard)

Youth Justice Review: Findings of Final Report

29 September 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Peter Weir
Mr Jim Wells

Witnesses:

Mr John Graham)	
Ms Stella Perrott)	Youth Justice Review Team
Ms Kathleen Marshall)	

The Chairperson:

The Minister made a statement in the House earlier this week on the youth justice review, and the review team are here today to brief us on their findings. I welcome Mr John Graham, Ms Stella Perrott and Ms Kathleen Marshall. Our meeting today will be recorded by Hansard. I will hand over to John to outline briefly the findings of the youth justice review report, after which members will have an opportunity to ask questions.

Mr John Graham (Youth Justice Review Team):

We are very pleased to have completed our task. We want to thank the numerous people who helped us. We consulted well over 100 people, and, during visits, spoke probably to hundreds of people, all of whom were very generous in giving us their time. I want to put on record how respectful people have been to the review and thank them for the generosity with which they received us.

We are not from Northern Ireland; we were brought in from outside. Northern Ireland is not a country that we are particularly familiar with; we know very little about it, except the sort of things that anyone coming from outside might know. We have tried to reflect back to you what your own people told us in as balanced a way as possible. In many respects, we were starting from a very good position, insofar as we were able to identify some very good improvements and sound foundations on which to build.

Having read the report, the Committee will know what those strengths are. We were very impressed with restorative justice and the placing of the victim at the heart of the system. We were very impressed also with Woodlands Juvenile Justice Centre, which is a state-of-the-art facility. Youth conferencing and the juvenile justice centre are, in my view, beacons of best practice; they are recognised and acclaimed internationally. They are parts of the system of which you should be rightly proud.

We were very impressed with the progress on policing since the publication of the Patten report and the extent to which the new arrangements for the police have the confidence of the public. We were also very impressed with those who work daily with young people, either in the voluntary and community sector or as professionals in the system. All are very committed, and we got the impression that those were strengths on which to build. We were also impressed by the strong role that human rights play in Northern Ireland. Civil rights matter in Northern Ireland, and that is reflected in the youth justice system.

We were concerned, however, by some of the things that we discovered that we felt needed to be drawn to the Committee's attention. They are things that can, largely, be rectified. By far the most important is delay, which affects everything in the youth justice system; it affects victims and offenders as well as the quality of justice. It ultimately affects the legitimacy of the state in delivering criminal justice to young people.

We were shocked by the extent of delay and the extent to which, despite considerable effort over the years — we were aware of this on many occasions — it has proved resistant to change. It has been so difficult to deal with the problem of delay, yet it is by far the most important issue that confronts you.

As with the prisons review, we were concerned about 16- and 17-year-olds, but primarily 17-year-olds, being held in an adult prison at Hydebank Wood. Like the prisons review, it was our opinion that that should stop and that 16- and 17-year-olds should be held in what has already been built to hold them: Woodlands Juvenile Justice Centre. That is what Woodlands was built for and that is what it should be doing. At the moment, Woodlands is working with the wrong population, primarily young people on remand. That needs to stop, and we say something in our report about how you can do that. If you could remove young people who are on remand from Woodlands — not all of them, of course, but a large proportion — you would have the space at Woodlands to take those young people who are being accommodated at Hydebank Wood.

Northern Ireland suffers from a disproportionately high number of young people on remand. There are more young people than adults on remand in Northern Ireland, and there are more young people on remand in Northern Ireland than in England and Wales. That is connected with bail, which is the alternative to custodial remand. We are aware of the Law Commission's work, and we have worked closely with it on this. We tend to share its views about the reforms that it is working and consulting on. I am not sure when it will publish — I think that it might be next year — but we share its views that you need to do serious work on the legislation on bail. Doing that will provide the capacity to take young people out of Woodlands and to place them on bail, which is where many of them should be. I can talk more about that if you want me to.

We visited youth courts as part of our work and found that much of what goes on in them takes place in spite of the defendant and their parents, if they are there; we felt that they were almost bystanders in the process. There was a great deal of activity, but the defendant and his or her parents, if they were there, did not really know what was going on and did not feel that they had a role to play. Even though there are very good guidelines for the youth courts, we felt that they were not being implemented properly in practice.

As you know, we have suggested that it would be a short and relatively easy step to raise the

age of criminal responsibility to 12. That is because we felt that, all things considered, the age of criminal responsibility in Northern Ireland was too low at 10. I can come back to that later if you want. We felt that that partly reflected the fact that, in some respects, youth justice policy and practice tend to be rather adult-centric; in other words, a great deal of thought and effort goes into how the system should respond to adults and, in a way, young people are seen as an extension of that. In fact, young people are very different from adults, and we have a separate system of youth justice to reflect that. Therefore, it is very important to understand that you need to treat, think about and develop policy for children and young people differently from adults.

That brings me back to the point about delay. We say categorically that delay could be best tackled by starting with the youth justice system. It is much more manageable, the numbers are much smaller and, most important, it is crucial for young people to be able to put an incident behind them, whether as an offender or a victim. They want to move on with their lives. Even more importantly, if a young person commits a criminal offence or misbehaves in some way, it is best to deal with it promptly. If you were a parent and your child did something wrong, you would not wait 250 days before doing something about it. You would punish them immediately. Why should the youth justice system be any different? I appreciate that the system cannot respond immediately. However, it does not have to take 250 days. If you are going to tackle delay, which you are, you should start in the youth justice system so that you can apply the lessons that you learn there more broadly to the adult system.

That is why we have recommended statutory time limits. We think that you need a step change here. If all the effort that has gone into this has delivered virtually nothing and delay has actually worsened in some cases, something radical has to be put in place. Our reason for going for statutory time limits is because what you need is collaboration. You need all the agencies to work with one another to understand that this is a problem that they all share and that they all have an interest in resolving it together.

A statutory time limit that starts at the point of arrest and goes right the way through to disposal or sentence is the only way of getting that collaboration. Last November, the Minister of Justice said in the House that he did not feel that Northern Ireland was ready for statutory time limits or that the agencies were ready to deliver on time limits. Our view is precisely the opposite: unless you introduce statutory time limits, the agencies will never be ready.

I would like to emphasise the extent to which there is a narrative that runs through the report; it is not just 31 disconnected recommendations. Essentially, the narrative is around three things. It is about delivering fair and effective justice to ensure that the state provides a legitimate alternative to what might otherwise happen in local communities, and has happened in the past. Part of that is to ensure that human rights are at the centre of the system. In many respects they are; however, in some respects they are not.

It is about ensuring that, in these times of economic austerity, you make the best use of the resources available and that you free up resources for doing the things that we feel you could do better. The most obvious, of course, is delay, which is hugely expensive. In the next few years, Northern Ireland will simply not be able to afford not to tackle the problem of delay.

In order for resources to become available in the justice system — professionals in the system are already working at full capacity — you need to ensure that the system focuses on the most serious and persistent offenders. Therefore, as part of the process of releasing resources so that those professionals can speed up what they do, it is essential that the system focus not on low-level crime but on the most serious and persistent. To do that, you need to develop diversion, which is why diversion from the criminal justice system is an important part of our report. I hope that you see how those things are connected.

By diversion, we mean ensuring that responsibility for low-level crime in particular rests with the communities where those young people live, with the schools that educate them, and, in particular, with the parents who are responsible for them. Removing parents' authority by suggesting that the criminal justice system can deal with all crime undermines parental responsibility, parental authority and parental discipline. That needs to be confirmed again and again and again. In the report, we said much about how that can be done. Diversion is a key part of that.

There are too many young people in the system. It would be much better if there were fewer. Some things could be done better for some of the young people in the system. When I talk about young people, I mean victims and not just offenders. Some things could be done better for young people who are exiting the system, particularly around reintegration and rehabilitation. We also said something about that in the report.

Finally, I want to emphasise the most important point: Northern Ireland is a society in transition. I would have thought that one of the most important things to all politicians, whatever side they are on, is that the Good Friday Agreement be sustained in perpetuity. To do that, you have constantly to persuade the population that you represent that the state and its role are legitimate. The best way of doing that is to ensure that the system is fair and effective and that it meets the needs of all the people who are affected by it, including young offenders, victims, witnesses and, last but absolutely not least, the public. Ultimately, the system has to protect the public. If it does not, the public will look elsewhere to ensure that the things that ruin their lives are dealt with by others. That has to be avoided in Northern Ireland more than anywhere else in the United Kingdom.

I am happy to take any questions.

The Chairperson:

Thank you very much, John. Your presentation was very articulate. There is a great deal of good work in the report that we can take forward. There will be areas on which I will disagree, but there is scope for the consultation to be carried out and for us to make changes. That will be done in many areas, but there will be key areas in which it will not happen. However, we will allow the consultation to take place. Thank you for your work. There is now a working document that we can take forward to ensure that it reflects exactly what we believe the community wants.

I am sure that members have questions; I have just a couple. If there has not been a disposal at the end of the statutory 120 days, will the charge, whatever it is, be dropped?

Mr Graham:

Yes. The case would be stayed. Unless you do that, the statutory time limit has no teeth. Of course, you need to guard against the possibility of injustice for victims in those situations, which is why we said in the review that it is critical that victims have an opportunity to appeal a decision. That is how statutory time limits work across the water. Time limits cannot work unless cases are stayed.

The Chairperson:

I agree that delay is inappropriate, particularly for young people. There needs to be a step change. As a parent of two kids, I would never dream of waiting 250 days before chastising

them. When I was growing up, it was bad when my mother told me at the start of a day, “Wait until your father comes home this evening and you will be dealt with then.” As a child, one day was a long enough dilemma to wait until my dad came home. You are right that there needs to be a step change in how people are charged and how charges are disposed of. I have spoken to young people who have waited so long that they do not realise what they are ultimately being charged with. I agree that work needs to be done on that. I am concerned that, ultimately, the victim does not get justice. We will have to tease out the safeguards that will be put in place if we decide to go down that route.

Do you envisage there ever being a scenario where a child is not kept at Woodlands and needs to be held somewhere different? Would there ever be an exception to the rule?

Mr Graham:

That is a very good question, and I am glad that you asked it. To be honest, we too struggled with it. At any one moment, there will be one or two children in Northern Ireland who are frankly dangerous to themselves and, more important, to others. In the report, we highlight that as something that you need to address. We have come up with one possible avenue that you could explore: have a special unit at Woodlands that can hold those one or two children when it is necessary. However, we do not have a magic bullet for that.

You will find the same problem in other small countries like Northern Ireland. In a large country it is more cost-effective to set up a specialist unit that may have 10 or 12 children in it at any one time; that makes sense. However, if there are only one or two children, that is not an option. There is a problem with that in Northern Ireland, and frankly, I do not have an answer. However, I cannot see Hydebank being the right answer.

The Chairperson:

As regards early intervention, which is a key area that should be taken forward, what we are talking about here includes carrying out a degree of profiling before people have even committed crime or come onto the radar to detect whether it is a generational issue and to determine how to make an intervention. You said that there are legislative, administrative and cultural barriers to pulling together the resources needed to do that work properly. Can you elaborate on those barriers?

Mr Graham:

The evidence for early intervention is very strong. There have been good examples of investment in early intervention leading to considerable financial savings down the line where children have been tracked over long periods. In fact, insurance companies in the United States now invest in early intervention projects on the grounds that they know that children who receive early interventions are much more likely to have a job, house and car when they become adults and are, therefore, going to purchase insurance. That evidence gives you some idea of the extent to which early intervention has become ingrained not just in politics but in private-sector culture, certainly in the United States.

The difficulty with early intervention, however, is that it is very difficult to measure the effect of a preventative initiative. If you prevent something from happening, how do you know whether or not it would have happened anyway? Another difficulty is that it requires resources and that its benefits are long term; you will not reap the product of those resource allocations for many years. However, some politicians' horizons and timescales do not extend that far for very good and understandable reasons: they have to be elected every four or five years. That tends to be their window. Therefore it takes a leap of faith to invest resources in early intervention. Those are some of the barriers that we have referred to.

Last but not least, another difficulty is that you need to find the resources for it, which will be difficult in the current climate. One of the ways in which that can be done is to adopt justice reinvestment, which was developed in the United States and which is being piloted in England and Wales. It involves shifting resources upstream from the justice system towards early intervention. That has been shown to be quite effective in the United States, where it was evaluated. Communities themselves make the decisions; you empower them with the wherewithal to say what they want to invest their money in. They soon learn that spending money on reactive responses by the justice system is just not as effective as preventing crime from happening in the first place, and they begin to shift the investment of the resources at their disposal to an earlier stage. Those are some of the barriers that you would need to address. They are primarily economic but also political.

Mr A Maginness:

I agree with the Chairperson that this is a fine report. I am looking for something to disagree

with, but I cannot find very much. In relation to the police's discretion to give warnings or, in a sense, to intervene but without any formal implications or reference to the courts, your report states that that is a good thing; however, on the other hand, you say that you do not want too much of that. I thought that that was a bit of a contradiction. The police are the representatives of the public; they are authority figures. Yet here is the state saying to a child that they have done something wrong but that it will not send them to court and instead gives them a warning. That is a very effective way of dealing with things.

Mr Graham:

We concur. The reason that there may appear to be a contradiction — although I do not think that it actually is a contradiction, but is perhaps an inconsistency — is that in Northern Ireland you are faced with a different situation in relation to the extent to which you give the police discretion. That is because of your history. There is an issue around the extent to which some communities in Northern Ireland trust the police. Therefore there is an issue around the extent to which you give the police the powers to exert authority without the safeguards of the justice system.

Some of the people that we spoke to were concerned about giving the police more discretion, but unless you give the police more discretion, you end up with more children and young people being dealt with in the system when, in fact, many of them could be dealt with outside the system by the police, either by using diversionary disposals, as they already do, or by simply asserting their authority. They are authority figures, and one of the ways in which they can do that is to take the child home and ask the parents if they know that their 14-year-old child was out at 11.00 pm last night drinking far too much and what they are doing to ensure that that does not happen again. The police can work with parents to reassert parental authority and responsibility without necessarily reverting to the criminal justice response, which is expensive and sometimes, notwithstanding the delay, not necessarily effective.

Mr A Maginness:

Youth conferencing is excellent, and we have established a model that others can follow. Is there any way of improving it? I know that you have referenced it.

Mr Graham:

We talk at some length about youth conferencing and say that it is a strong part of your system; it is something that you should be proud of. The youth conferencing system gives the victim a

voice and places them at the heart of the system; it also ensures that the offender is an active participant in the process as opposed to in the court. It ensures that any harm can be repaired, which is often what the victim, and the community, wants. The principle of restorative justice is very good, as is the way in which it has been implemented here through conferencing.

However, conferencing has been around for four or five years, and we felt it was important to look closely at whether it was working and whether there were ways of improving it. We felt that three things could at least be looked at, and the first of those is victim participation. It is important to have high levels of direct victim participation, and it is much better for a person who is emotionally and materially affected by the offence to participate in the conference, rather than a representative.

Over the four-year period, we were slightly concerned at the extent to which plans that come at the end of a conference seem to be becoming increasingly disproportionate to the serious nature, or the lack of serious nature, of the crime. We were concerned about the issue of multiple conferences, and that was drawn to our attention by a number of people. If you look at the data — the data that was available to us — multiple conferences do not occur very frequently. However, when they do, it undermines the confidence of all those participating if a young person has gone through a conference time and again, and is clearly reoffending and is continuing to create harm. In those circumstances, we felt that conference co-ordinators should be given the discretion to say that enough is enough, that a person has had a number of conferences, that they do not feel that any more conferences will benefit that young person and that they are going to refer that young person back up to the courts. There are ways in which you can strengthen what we consider to be something that is already valuable.

Mr Lynch:

I thank the team for a comprehensive report. I have a number of questions. Mr Maginness raised the issue of police officers becoming involved, and, as you said, using their authority. What safeguards are in place to protect children in those situations and to ensure that that authority is not abused?

Mr Graham:

It is important that the police officer does not end up as judge and jury. At the same time, do you really want to take a young person who has damaged a bus shelter all the way through to court,

over a period of 250 days, and for him or her to probably end up with only a minor sentence? We must find some way of balancing that, and you are right that there need to be checks and safeguards in respect of how the police behave. That is for the police and others such as Criminal Justice Inspection Northern Ireland (CJINI) to scrutinise, regulate and inspect, and you also have the right legislation in place to ensure that that discretion is used properly.

Ultimately, however, none of those things will probably work on the ground. What will work is ensuring that officers do the right thing. It is also important that they understand what discretion means, what their powers are and that they be trained to use those powers properly. Sergeants have a very important role in supervising, and they need to be out there and make sure that officers do not abuse their powers. There are ways in which you can regulate discretion to ensure that it is used properly, but I agree that it is always difficult.

Mr Lynch:

Will the team provide more detail on the legislative and practical steps that are involved in the transition to Woodlands?

Mr Graham:

That is probably beyond our brief and, I think that it is something you will need to work out yourselves. We pointed out some of the things that we think that you need to consider, and I already mentioned one of those earlier, which was the making of special provision for the one or two dangerous young people here. It is important to ensure that those young people who are currently in Woodlands, or who would normally be in Woodlands — some would come out if the numbers who are remanded there are reduced — receive the right kind of regime. It is also important that the right kind of ethos is in place, that they get the right kind of services and, most importantly, that they are safe. That must be part of what needs to happen in practice.

As we say in the report, Woodlands should no longer be used as a remand centre, which is what currently happens to a large extent. You need to have the right children and mix of children there. The legislation has to ensure, therefore, that bail and remand are handled properly to ensure that that can happen.

Ultimately, the legislation has to be drafted following your three-month consultation period. I am sure that if you wanted further help with that, we could certainly assist. We know, for

example, what is done in other countries. We went to Holland and looked at what is being done there. Some of what is being done there is very powerful, particularly the way in which they allocate a key worker to every young person in custody. That key worker is with the young person not only from day one until he or she leaves custody, but in the community. The key worker follows him or her into the community and ensures proper rehabilitation. Therefore, elements of good practice can be borrowed from other countries.

Of course, there are European rules for juveniles on community sanctions, measures and custody. That provides a blueprint for what an organisation like Woodlands should do if it is going to comply with Council of Europe standards. Therefore, there are ways in which, I am sure, we could help you with that. Ultimately, however, that is something that we could not address directly in the report.

Mr Dickson:

Thank you for a comprehensive and timely report, which, as the Minister said in his statement, should command a great deal of debate in the community. We can all sign up to many of the issues in it. Like Mr Maginness, I find it difficult to see areas where there would be a great deal of disagreement. Clearly, there are things that we need to do to either “Northern Irelandise” matters or to make a few changes.

I want to concentrate on the area of reinforcing parental responsibility. Perhaps this is a slight aside; however, it is part of the issue. You commented on good practice in Holland with regard to the allocation of a key worker. It shocks me that that is something that we have not done and do not do. Personally, I find it appalling that young offenders do not have a key worker, a named person, who is responsible from the time that they are charged with the offence to the time of the disposal. That leads me to the question of parental responsibility. Can you give us good examples of how you see parental responsibility being reinforced? Is that a potential role for a key worker with regard to the offender, the parents and, indeed, the victim? In fact, the key worker may very well be pivotal to all three parties in the process.

Mr Graham:

I can try and say a little bit. I will then hand over to Stella, who probably knows more about that than I do. Obviously, there are different kinds of parents. Some parents would be quite shocked if their child committed an offence. They would, probably, not know about it and would want to

ensure that it did not happen again. They would probably do everything that they could to ensure that it did not happen again. The majority of parents are like that. Some parents are less capable of exercising discipline and responsibility. Others are not even interested in exercising discipline and responsibility. The first point is that it is not one size fits all.

The second point is that there are ways in which you can support parents. There are ways in which you can provide them with education and training. Indeed, there are also ways in which to compel parents to engage in parent training courses, for example. We did think about that. There is such a thing in England and Wales; it is called a parenting order. We considered whether that might be appropriate in Northern Ireland. We also consulted with others about whether they thought that that was appropriate here. We found that the consensus here was that it was, probably, not the way forward.

Having said that, the Council of Europe recommends parenting orders, but they are not compulsory. However, the Council of Europe recommends that people participate voluntarily in education and training courses. The benefit of that is that you then get a parent who is willing and able to engage with an intervention, rather than a parent who says, "I do not want anything to do with it this. I do not need this. Go away." That is also part of the horses for courses issue. I will hand over to Stella, who can help you more with that.

Ms Stella Perrott (Youth Justice Review Team):

For most young people, offending is a fairly normal activity. Studies indicate that over 50% of young people offend at any time during their teenage years. Most of them are not caught offending and, if they are, it is dealt with by the family or within the community. Most young people grow out of offending by their late teens, even those who offend quite seriously. For most young people, getting caught is as much as it takes. However, there is a small group of young people, probably about 10% of offenders overall, which is the group that you are most exercised about. They are less than 1% of the child population, and that is taken from figures across the UK and not specific to Northern Ireland. We are talking about a very small number of children who are causing an enormous amount of concern in their communities. The offences committed tended to be damage to cars, which was quite significant, damage to property and sometimes serious things such as household burglaries.

The other concern is that those are the sort of offences that generally go undetected. They are

quite difficult for the police to detect. About 9% of burglaries are detected in Northern Ireland. There is high concern about the behaviour of those children. Those children are not necessarily always in the youth justice system, but everybody knows who they are — or they think that they know who they are. When we spoke with parents and communities, we found that they wanted a range of responses. In the main, parents wanted to be able to deal with offending. Phrases used were, “Take their pleasures from them”, “Keep them in”, “Ground them”, “Take away their pocket money”, “Talk to them”. Those were the major things that parents wanted to do. However, at the other end of the extreme, they wanted something to happen with those children and families that they thought were running round the communities behaving in ways that caused a lot of difficulty.

As John said, there are examples from elsewhere of where intervention with parents has worked. Our observations from talking with parents who are in difficulty — and we talked with a number in our visits — were that they seemed to lack understanding about the impact that their child’s behaviour was having on other people. It is not that they were saying that they did not care; they could not see the issue and they could not see the problem. There is a major concern about parental education with some parents. Secondly, the parents that we spoke to whose children were causing enormous difficulty did not know what to do to make things different. Research indicates that they need a lot of intensive help and training over a period of time. They are generally willing, and they want to do better. They do not want their children messing up their own homes or having the police around to the house every night. They want to do better but they do not know how. Often, they are antagonistic to state services — the police, social workers or whatever — and have a long history of that.

We do not want to underestimate the difficulty of that task, but we think that the numbers are small. As John said in his introduction, we think that it is worth the investment. Some highly problematic families will be costing you over £1 million per annum with residential schools, police intervention, youth custody, psychiatric services and child protection services. It is worth trying to intervene early in the lives of some of those families. Some may need compulsion. My sense is that, if they need that much compulsion, their children are likely to be at serious risk. However, the number of people that will need compulsion will shrink if you provide intensive services. Compulsion may be needed in some cases.

Ms J McCann:

I apologise for being late; I was at another event. I welcome the report and particularly its findings on early intervention. I know that some members have already commented on that, particularly where families are concerned. I believe that there are a lot of young children who do not get a good start in life, and a wrap-around service for families is important.

I wanted to concentrate on a couple of points in the report. First, the development of the detention facility at Hydebank Wood for under-18s is very welcome. We have to decide where a number of dangerous young offenders need to go, particularly those who have been convicted of minor offences. When I asked the Minister about that issue the other day, it seemed that no one is talking about a time frame for action on it. My second point is about children with mental health problems and drug and alcohol misuse problems. In the report, you say that 59% of the young people that you saw in Woodlands showed some sign of having mental health problems. You said that the situation is fragmented, but that there were people there who were caring for them.

I want to ask about the child and adolescent mental health services (CAMHS) programme. I worked in a drug and alcohol programme with young people before I came here. We would have referred families and young people to that programme. Why did you not recommend that more resources be directed towards that programme for young people in custody?

You talked about children coming from families that need early intervention. There are parents of kids with drug and alcohol misuse problems who are at their wits' end. They have 13 or 14-year-olds who, until last year, perhaps, were going to school every day and were model young people, but have come under the influence of drugs. The parents do not know where to go to get help. Some of them have wanted their child put in custody, believe it or not, because they were concerned that their children were going to harm themselves or someone else.

We do not have a facility in the North for young people with addiction problems. To put young people into treatment centres is the same as putting young people in prison with older people. Those influences do not work for them. Is there any long-term joined-up thinking to deal with that? Those problems are becoming more and more recurrent, and young people who were never in trouble in their lives are becoming addicted to drugs and doing things that are totally out of character. If they get the right treatment and their families get the right support, perhaps the criminal justice system would not need to be there for them.

Mr Graham:

Your first question was about a time frame for moving children from Hydebank Wood to Woodlands. We say in the report that that should be implemented within a period of no longer than 18 months. In relation to mental health —

Ms J McCann:

Why 18 months? That is my point.

Mr Graham:

We are saying that it needs to be done urgently. It is no good us saying that it needs to be done in the next five years; we are saying that it needs to be done urgently.

Ms J McCann:

Could it not be done earlier?

Mr Graham:

We could have said 15 months or 21 months. There is always going to be a degree of arbitrariness attached to any time period, but there is already going to be a three-month consultation. We think that, within 15 months, you ought to be able to make the necessary changes required to shift those young people out of Hydebank. If we had said six months, for example, officials would have thrown up their hands in horror and said that they could never do it all in six months. Equally, we did not want to tell them to take their time over this and to take four or five years. If we had, nothing would happen. You have to find some kind of middle way, so we came up with 18 months. It is, to some extent, arbitrary.

The criminal justice system should not be used to access services for mental health problems, alcohol or drug misuse problems. That is not its function. That is why one of our recommendations is the introduction of triage at the point of arrest. If such a system were introduced, the young people who are arrested would be immediately referred to the relevant agencies if there was considered to be a risk or an obvious sign of a mental health problem or a drug and alcohol problem that needs to be addressed. That would be done irrespective of whether that arrest leads to a charge or a prosecution and, subsequently, goes into the criminal justice system. Resources would, therefore, be brought in immediately, at the very beginning. That is

one thing that we recommend.

I am going to hand over to Stella on this issue, because she did a lot of work on drug and alcohol issues, in particular, and on mental health.

Ms Perrott:

We found what you found: teenagers coming in and suddenly going off the rails. Some of those were children who had previously behaved in an exemplary fashion. A number of people raised that issue with us. Alcohol is certainly a problem that we saw a great deal of. We did a small survey of the youth conference plans, and I think that alcohol appeared as a problem in something like a third of those cases. Bearing in mind the fact that all those young people are below the age at which they can drink legally, we thought that was quite a significant problem. People told us that harder drugs are a growing problem. They are concerned about what is going to happen in the future, because they see an increase in drug use.

We noted and were told that there has been a huge increase in resources going into mental health in the past few years since the Bamford review and that the number of psychiatric beds has increased. We were told, and we have no reason to do doubt, that there is a full complement of psychiatrists in relation to CAMHS. We thought that Woodlands was very well serviced with regard to psychiatric resources, but, as we have said in the report, there needs to be much better co-ordination across all the services on a number of fronts. The links with the community, in custody and back out into the community need to be better joined up and pulled together. There is not much point in having a very good resource in Woodlands and, subsequently, finding that children fall through the net when they come out. We agree with you on that. I think that we have said that in the report about all those services.

It is also worth mentioning young male suicide, which was mentioned to us. It linked with mental health difficulties in the report. Most young men seem to associate that with the neighbourhoods and the areas within which they live. Clearly, a lot of young people cannot look forward to having a job. There are growing addiction problems in their communities, and there is real anger and frustration at paramilitaries. They also feel that there is not much for them in their communities. There are indications that there may be increasing mental health problems that will have to be faced up to in the future.

Mr Wells:

You will have been expecting this question. We have been doing this for an hour and, funnily enough, no one has mentioned recommendation 29, which relates to the raising of the age of criminal responsibility.

Mr Graham:

We have to go now. *[Laughter.]*

Mr Wells:

There is as much chance of Limavady United signing Carlos Tevez as there is of MLAs from certain parties backing that recommendation. What shocks me even more is that the press have homed in on the fact that there is a possibility of it being raised to 12, but if you actually read your recommendation, it is even worse than that. It says:

“consideration should be given to raising the age to 14.”

I am going to have to ask you the awkward question, and, at least, you had the benefit of watching the reaction to this in the Assembly on Monday: what would have happened in the Jamie Bulger situation if you had had your way? What would have happened to those two evil young men, Venables and Thompson, if you had had your wish?

Mr Graham:

We knew that this would be controversial. We also knew that this was the theme of the report that would be picked up by the media. We thought long and hard and very carefully about what we were going to say about the age of criminal responsibility, and if you read the text of that particular recommendation, you will see that we have tried to be as balanced as we possibly can be. Indeed, it was even illustrated in the question that some people are very much against raising the age of criminal responsibility, and some people are not. Therefore, in a way, we knew that we could not win on this one. However, we felt that we had a responsibility because we were asked in our terms of reference to consult the international norms and standards around the age of criminal responsibility, and we did that at great length.

I am going to pass this on to Kathleen in a minute because one of the source documents that accompanies this report, which you will not have read by now because it is 100 pages long, very carefully documents all the international norms and standards relating to youth justice. I tell you that because it illustrates the extent to which we have put a great deal of work into this matter.

You have to bear in mind that Northern Ireland is an outlier. In terms of the age of criminal responsibility, 10 is low. In the Republic of Ireland, it is 12; in Scotland, it is 12. In both countries, there are conditions attached to that, but, essentially, it is 12 in the Republic of Ireland and in Scotland. In most of Europe, it is 14 and sometimes older than that.

The age of criminal responsibility ranges in different countries from seven — much lower than 10 — all the way up to 18 in some countries. Therefore, there is a huge range. There is no magic age, and there is no right age. Chronological age is a very poor guide to how you should respond to someone who commits a crime, particularly a very serious crime, as was committed by Thompson and Venables 20 years ago.

Mr Wells:

What would have happened?

Mr Graham:

I will come to that.

Mr Wells:

I thought you were trying to get round that.

Mr Graham:

Absolutely not, but I will probably pass it on to Kathleen. You could have asked what would happen to someone who was aged nine and three quarters who committed murder? It just so happened that Thompson and Venables were 10. What would have happened in this country if a nine-and-three-quarter-year-old child committed murder? Do you think that nothing would happen? Of course something would happen immediately. They would be dealt with appropriately by your care system — that is what it is there for — even if they committed murder. And if you raise the age of criminal responsibility to 12, the same would happen to someone aged 11 and three quarters. Do not forget that, in Northern Ireland, very few people under 12 commit crimes and that you have not had a murder by anyone under 12 in living memory.

You have to decide for yourself what is right for you as a country. It is not for us to say what you should decide. We have merely made a recommendation because we think that 12 would be

correct in your circumstances. It would be easy for you to raise the age to 12; it would hardly make any difference to anything. The last thing that you want to do is to base policy on a single crime, such as the Jamie Bulger murder. That takes us back to the question. Do not forget that the procedure by which those two young boys were tried in a Crown Court in the England and Wales jurisdiction for the murder of Jamie Bulger ended up in the European Court of Human Rights. England and Wales was found guilty of breaching the European Convention on Human Rights. Do not forget that; it is important.

However, I will hand over to Kathleen now because she knows much better than I what would happen to Thompson and Venables.

Ms Kathleen Marshall (Youth Justice Review Team):

First, what happened to Jamie Bulger was a tragedy that still reverberates. It is always the case that people cite when this issue is raised, and, for very good reason because it was so shocking. It raises issues, though. I remember the debates in Scotland about it at the time, when someone referred to a case 100 years previously in Scotland in which children of the same age as Thompson and Venables had carried out a remarkably similar crime. Although we tend to think of Victorian justice as being Dickensian and punitive, the questions that filled the newspapers at that point were not, “Why are these children so evil?” It was, “How did our society produce children capable of committing such an act?” There are different ways of looking at it.

There absolutely has to be a response when children behave like that. It is a question of getting the right and most effective response. There is a question here. We talk about evil. Children in Northern Ireland are surely not more evil than children in any other part of the world; far from it: we met some inspiring young people as we worked on this project. It seems such a shame, to get back to the international side, that Northern Ireland is let down by falling below the standards that the international bodies require, when it has got so much else that is good. It would not take very much, nor would it have a huge impact, to raise the age to 12, which is the basic minimum standard regarded as internationally acceptable.

You rightly pointed out the fact that everyone has ignored that it goes on to talk about 14. I believe that one reason that that was put as something that is not immediate is that we all want the same things. We want an effective response that will help to put young people on the right track and not confirm them in their criminality. The evidence is that the more they are involved in the

justice system, the more that they will be confirmed in their criminality.

We are not saying that there should be no consequences or accountability. Within some of the good provisions that you already have, a pathway has to be carved out that will make it clear to everyone what will happen if a child under the age of criminal responsibility commits a serious crime. There must still be some accountability, there must still be a response, there must still be consequences, but you can take those out of the criminal sphere and deal with the child in a different way.

Scotland's method of bringing young people to some accountability has elements of compulsion: that happens through a civil rather than a criminal court. However, there are other ways, and there will be other solutions for Northern Ireland. You cannot just transplant a system from one country to another. Work needs to be done in the next few years to try to get a fair and effective system that results in the kind of society that everybody wants. We had a lot of support for that in the community, where there is frustration at crime and its impact on communities. However, everybody wanted the best for children and for communities. It is effectiveness that counts.

The work that has to be done in Northern Ireland is to examine how we can create that path to make it clear to everybody what happens, bearing in mind all the good things that we have as well. I think that you are well on the way to doing that.

Mr Wells:

In 27 cases last year the defendant was between the ages of 10 and 12, and those 27 people would get off with a much less punitive regime. It is, frankly, a very good report. However, it is a pity that this recommendation is in it, because it will dominate all the debate. It would have been better if it had been left for another document. You have rehearsed your arguments well, you were ready for us; but you will have to use the same arguments time and again.

Shoplifting gangs use young people, young boys mostly, to go into shops and pilfer. If you raise the age of criminal responsibility to 12 and then to 14, you will widen the scope; the children will get away almost scot-free while those controlling them will profit.

Mr Graham:

Can I make an important point about raising the age first to 12 and then to 14? We have not recommended that you raise the age of criminal responsibility to 14.

Mr Wells:

Your report says:

“Consideration should be given to raising the age to 14.”

Mr Graham:

Yes, consideration should be given to raising the age to 14 over a period of three years during which your country decides, having raised the age to 12, whether it believes that it is the right thing to do for your people. That is very different from us saying that you should raise it to 12 and then to 14. We are not saying that you should raise it to 14; we are saying that you should make that decision yourselves. You should have a debate about it and decide yourselves, on the basis of the evidence of raising it to 12, whether you think that it would be good to raise it to 14. We are not saying that you should raise it to 14. It is important that you read not just the recommendation but the text around it.

The Chairperson:

It could have said that consideration should have been given to lowering it. That might not have been your opinion, but you could have said “consideration”.

Mr Graham:

We are not recommending that you lower it at any stage. We are recommending that you raise it to 12, which would at least bring you into line with international standards. Lowering the age does not come into it because you would be moving further away from international standards. Our terms of reference were to have regard to international standards.

Ms Marshall:

There are concerns about children below the age of criminal responsibility, whatever it may be. We made it clear in our report that we think that children of quite a young age can have different degrees of responsibility. Children have a right to discipline; they have a right to be brought up in the knowledge that there are boundaries and standards, that there is right and wrong and that there are consequences if you do the wrong thing. How you respond to that is different

depending on the age of children; but if you work on carving out the paths more clearly in order to define what happens, in a non-criminal way, to respond to wrongdoing by children, some lessons learned from that could be applied to children of all ages.

Mr Wells:

There would have been a national outcry in England had the legislation been changed to prevent the prosecution of Venables and Thompson.

As regards the 27 cases, the Public Prosecution Service (PPS) would have decided that, for a large proportion of those who offend in that age group, it was not in the public interest to prosecute. Therefore the 27 cases that got to court were only a very small proportion of the offences made. The discretion was still there. If a child were, for example, educationally subnormal or had had a terrible upbringing or been abused, the PPS would look at that, and the decision would be made that prosecution was not in the public interest, that there was insufficient evidence, or whatever; but it is still there.

My fear is that, if you go down this route, some young person will commit a dreadful atrocity, perhaps in a riot, which is perhaps more likely in Northern Ireland, and kill or seriously injure a policeman for example, and we will not have the power to do anything about it. There is tremendous concern about this recommendation from this side of the House. It should have been separated out into a separate document rather than dominate what is otherwise a very useful document.

Mr Graham:

That is exactly the point that we are making: you will have the power, and that power will be more effective. If it were not more effective, there would be no point.

Mr Wells:

The public will not see it that way.

Mr Graham:

I accept that that is a possibility. That is why, as I said at the very beginning, we thought long and hard about whether we should duck this issue. However, we felt that we could not do that. I agree that there is a chance that this one recommendation could overshadow all the others in the

report, and it would be a great shame if that happened. Frankly, however, that is up to you. We looked at the whole system and did what we could; we think that we have done something that will help you. We hope that we have done something that will help you.

As I said, we have looked right across the system. The age of criminal responsibility is just one small part of the report. I understand the politics around that issue, and they are based on very strong values and beliefs; however, it would be a great shame if you allow those politics to take away from the value of everything else in the report. It does not have to be that way. It does not mean that you have to accept that recommendation; you do not. However, do not let that recommendation stand in the way of everything else in the report. Do you want to add anything, Kathleen?

Ms Marshall:

I hope that there will be proper debate. From talking to communities we know the frustration that some people have, quite rightly, about things that happen in their areas. However, we also met people who were reflective and were thinking about their own children, the kind of environment that they want them to live in and what will happen to them. They want to nurture them and put them on the right lines.

Although people are concerned, there is also a great deal of goodwill about getting something effective. I hope that politicians will lead that debate in a reflective way and help people to think about it rather than having a reaction that is, to some extent, immediate and borne out of sometimes quite justifiable anger and frustration. We need a proper reflective response and a good debate.

The Chairperson:

This recommendation will certainly lead to debate.

Mr Graham:

It will run and run.

Mr B McCrea:

With the exception of Mr Wells, everyone has said that we can agree with every element of this report, but I do not agree. I have read it in some detail, and I went to Hydebank Wood this

morning to check out some of the issues. The Chairperson will probably not allow me to make all the points that I want to, but I will start with the key ones.

The age of criminality is not one small part of the report; it is its fundamental essence. Kathleen said that you do not want to confirm young people in their criminality. The issue is not that people are not responsible but that the criminal justice system is not the appropriate way of dealing with them. You have yet to win that argument.

There are inconsistent areas. John talked about chronological age not being the biggest determinant when the ages are 12 or 13, but surely that also applies to Hydebank Wood. People there said to me today, "I am aged 17; I do not want to be treated like a child." The whole essence of this is that one size does not fit all; it is about individuality. The Chairperson put a question to you about age. I will stop so that you can respond, but I have a few specific questions.

The United Nations Convention on the Rights of the Child advocates that child welfare should be at the centre. However, there is a perception that we are forgetting the rights not just of the victim but of communities. How do we ensure that there are checks and balances? If you take the issue of age moving from 10 to 12 or from 12 to 14, why not to 18? Your report states that, under the Justice (NI) Act 2002:

"the intention was to treat all under 18 year olds as children."

You go back to that argument. You have to make the argument — and I do not think that it has been made — that there is a better way of dealing with people than through the criminal justice system.

Mr Graham:

I will pick up on one or two of those points and then allow Kathleen and Stella to say something about them.

In relation to the rights of the community and what we say about the UN Convention on the Rights of the Child, particularly article 3, which refers to representing the best interests of the child, we say that the best interests of the child, according to international instruments, should be part of the principal aim of any youth justice system. In Northern Ireland it is not. Protecting the public, however, is part of the principal aim. All we are suggesting is that all those things should

be reflected in the principal aim of the youth justice system. It is not just about protecting the public or preventing offending and reoffending; it is also about ensuring the best interests of the child and ensuring that all the right components are part of the principal aim.

In relation to chronological age, Basil — if I may call you Basil —

Mr B McCrea:

Of course you may.

Mr Wells:

He has been called much worse than that. *[Laughter.]*

Mr B McCrea:

Only by you.

Mr Graham:

You are absolutely right: in an ideal world, the youth justice system would respond to any young defendant who comes before it on the basis of their emotional, physical and intellectual development. Of course you would do that — but do you know how difficult, time-consuming and expensive that would be in practice? You would have to assess every person who came before you to establish their emotional, intellectual and physical development. It is impossible to do that, so we use chronological age instead. However, it can only ever be a rough guide.

Mr B McCrea:

John —

Mr Graham:

Please let me just finish.

Mr B McCrea:

I want to interject on that point. When I am in Hydebank Wood today, I am presented with a form, several forms in fact, that show that you are interviewed by a mental nurse professional and it does go through the proper procedure, the same procedure that is used in all institutions in Northern Ireland to check these issues, these risk assessments. And we do assess whether these

are the right conditions, and there is, as you suggest, conferencing between Woodlands and Hydebank Wood as to what is the most appropriate place to put someone in.

There are, without mentioning names, though people, I think, have referred to it, people in certain institutions that are an absolute danger to the public, even though they are under the age of 18. And so all of the issues that you have got in there are actually in place, and that is why I am surprised about, whilst I agree with, you know, your statement here on page 77 about what you are at a minimum, which is what you are suggesting, I actually think you can and you should.

Mr Graham:

I am sorry; I did not quite understand that.

Mr B McCrea:

You just told me that we cannot do it, but you recommend in your report:

“At a minimum, they should undergo a full assessment of their needs and circumstances, including their developmental age”.

Now you tell me —

Mr Graham:

That is not about the decision on whether they should be sentenced to custody and whether they should be dealt with by the youth justice system; that is about what happens once they enter custody and have to receive a whole series of interventions and services. You cannot provide them with services and interventions unless you know their needs. Every custodial organisation will do a needs assessment, but it has to be done on day one.

Mr B McCrea:

You said that it could not be done, but it is being done.

Mr Graham:

I did not say that it could not be done. I am sorry; there must be a misunderstanding.

Ms Perrott:

I thought that you were talking about the age of responsibility being developmental being too difficult a task.

Mr Graham:

Yes; there is a misunderstanding.

Mr B McCrea:

We will move on, because I want to get to a few other points. I will take your word on it, but it seemed to be contradictory.

Ms Perrott:

You raised the important point about the report not making the case that dealing with children in the criminal justice system is the best option and our suggestion that it is not. We cover that in the report, but perhaps not as well as we should have; perhaps we could have covered it more deeply. However, all the indications from international research are that contact with the criminal justice system tends to accelerate criminality and that the children and young people who stop offending most quickly are those who do not get caught. We did not want to put something like that in the report, because it is not a very good message. Dozens of studies indicate that the younger a child, the best option is to keep them out of the criminal justice system. That system tends to accelerate their offending and their being drawn into it.

There is also — and John touched on this earlier — a great deal of evidence that indicates that, for persistent and serious offenders, you need more intervention. It is a case of managing that balance: you do as little as you possibly can for the bulk of children, whereas for serious or persistent offenders you have the intensity that they require to change their behaviour.

Mr B McCrea:

I accept that. That is why, when I was talking about these things in the Assembly, I accepted the argument about 12 or possibly 14 being under review. However, I still come back then to the point that says that, if I am right in your report, that there is a presumption, if not from your report, in terms of the international obligations, that in the case of young people under the age of 18, a presumption of bail should be granted and that you should not go into any form of remand or custodial sentencing. Is that your opinion?

Mr Graham:

My understanding is that the presumption of bail is already the law in this country. It is not

something that we are recommending; it is already part of your legislation.

Mr B McCrea:

I have read the report about four times, and I can only remember the various bits —

Ms Perrott:

You are doing well.

Mr Graham:

Do you mean the presumption of bail without conditions?

Mr B McCrea:

Yes.

Mr Graham:

OK. What we suggest in the report is common practice in many countries, which is that you start with the presumption not just of bail but of bail without conditions. Only then do you begin to consider conditions under certain circumstances, and we set out in our report what we think those circumstances should be. They are also in line with what the Law Commission suggests such circumstances should be. What they clearly should not be is a situation in which the young person is, in effect, set up to fail. What you do not want is a young person who is on bail for so long and with such strict conditions that they have absolutely no chance of not breaching bail, because you end up with a young person who has been set up to fail. That is why I said at the very beginning that if you tackle delay, solutions to problems like that will fall into place. The problems will not occur anymore because people will not be so long on bail.

Mr B McCrea:

I want to make another point, even though the Chairperson has been very indulgent in letting me go on. The question of access to services not coming through the criminal justice system is a moot point. I suspect that the Minister says that we have some delay because we simply cannot pick up those people in the way that you are looking at.

Although I may understand that demand is not the right way, it is a matter for the judiciary. It is they who make the decisions on those issues, and we must convince the people that there is a

more effective alternative to what has been put forward. I am not sure that we have made that case.

I want to draw one item to your attention. I am not sure whether you have read the report from the Policing Board on its observations about children and young people. It deals in great detail with anti-social behaviour order (ABSOs), acceptable behaviour contracts (ABCs), dispersal zones, which exist in England and Wales but not here, and alternative forms of dispute resolution. Unless you are able to address the whole system, your attempt to address this particular part of the system will be misunderstood.

I want to conclude on a point that some may find a little surprising. I understand the argument that you have made, although I must go and convince others that the less they have to do with the criminal justice system the better. By the way, Stella you have given us some great quotes, such as the best way for people to make sure that they do not reoffend is for them not to get caught. *[Laughter.]*

Ms Perrott:

We were not going to say that in the report; it is not a good message.

Mr B McCrea:

You also said that some people cost £1 million per annum to look after. Those are great quotes, which I will look at in the Hansard report.

There is an issue, and, to take the things that you said logically, you could win the argument that there is an issue at the age of 12, except in exceptional circumstances. You could even go as far as the age of 14. However, equally you could argue the other way around and say that you want to treat those 17-year-olds who are fighting for this country in Afghanistan, as children. There needs to be an age of criminal responsibility and maybe the top end of that should be the age of 16. However, we need a differentiated approach to make sure that we are not just looking after individuals. Whatever intervention we bring in should reduce the likelihood of people reoffending and reassure the population that we know what we are doing.

Mr Graham:

I am not sure whether that was a question or a statement. If it was a question then I will probably

need clarification —

Mr B McCrea:

That is all right. I take it that the Chair is rolling his eyes at me. I have made the point. The final thing —

A Member:

Final, final?

Mr B McCrea:

Do you see what I have to put up with in here? The useful element of the report, for which you should be commended, is its suggestion that informed debate should take place. Therefore, it is not about following slavishly what your report says, but understanding the basis on which it is written and reaching conclusions that we can all support.

Mr Graham:

I agree. On a final point, if we can help you in any way, we would more than happy to do so.

The Chairperson:

John, Kathleen and Stella, thank you very much for your time, we appreciate it. I am sure that we will want to follow up on this.