www.coe.int/
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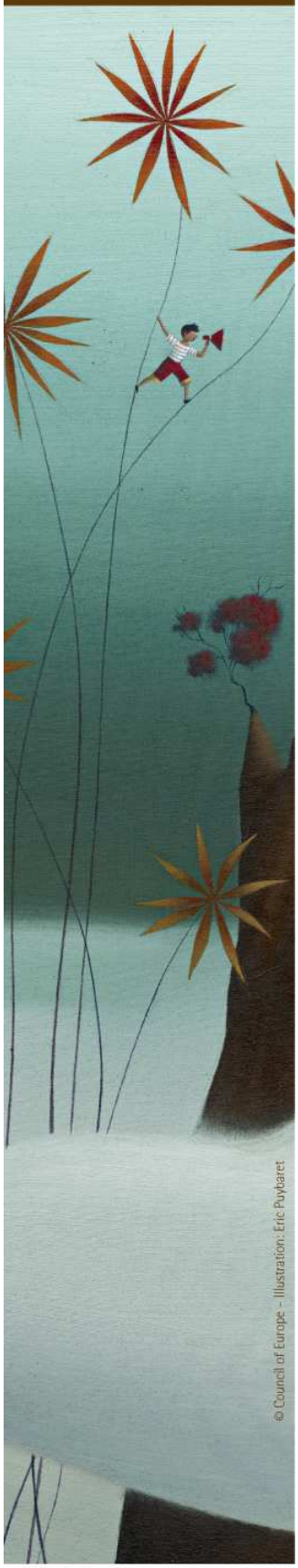

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GROUP OF SPECIALISTS ON CHILD-FRIENDLY JUSTICE (CJ-S-CH)

LISTENING TO CHILDREN ABOUT JUSTICE : REPORT OF THE COUNCIL OF EUROPE CONSULTATION WITH CHILDREN ON CHILD-FRIENDLY JUSTICE

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1. INTRODUCTION

In November 2008, the Council of Europe adopted the Strategy 'Building a Europe for and with Children 2009-2011' with the twin aims of promoting children's rights and protecting children from violence. In November 2007, with a view to pursuing the former goal, the European Ministers of Justice adopted Resolution No 2 on child-friendly justice, thereby entrusting the competent bodies of the Council of Europe to prepare European Guidelines on child-friendly justice. The Guidelines are intended to assist member states in ensuring that children have favourable access to justice, and to enhance the treatment of children whenever they, for whatever reason, come into contact with civil, administrative or criminal justice authorities. The Group of Specialists charged with this task began its work in April 2009 and at its meeting in December 2009 it decided, in line with its terms of reference, to consult directly with children on their experiences.[1] Children have a right, under the United Nations Convention on the Rights of the Child, to express their views and have those views taken into account on matters that affect them. The value of ensuring that children's perspectives and experiences inform their treatment is well established in research and in practice and it is thus very important that Guidelines designed to improve their treatment in the justice system are informed by their experiences and views. Although it would have been inconceivable, for these reasons, for the Guidelines to be finalised without input from children, it is nonetheless significant and very welcome that the decision was taken to consult children directly on this issue.

In principle, the child-friendly justice (CFJ) consultation exercise is to be warmly welcomed and the Council of Europe is to be congratulated for undertaking the ambitious task of gathering the views of children on their experience of 'justice' across the 47 member states. This was the first initiative of its kind undertaken by the Council of Europe in its standard-setting activities and it shows that the Council of Europe is well placed to carry out research with and for children internationally and across jurisdictions. At the same time, it is important that lessons be learned from the process to ensure that any future consultation with children is informed by the highest standards of research ethics, best practice and children's rights principles.

Against this backdrop, this report has two main aims: first, it presents the views of children gathered during the Council of Europe's consultation exercise on child-friendly justice. Second, it reports on the consultation process itself and reflects on what lessons can be learned in order to improve any subsequent initiatives to involve children in the Council of Europe's standard-setting work. The Report is divided into four parts. The first part outlines how the research was planned, and what methodology and approaches were used. This identifies the limitations of the research methods used and makes some suggestions for how future research can be undertaken by the Council of Europe. The second part of the research contains an overview of the literature on the experiences of children in the justice system. This is designed to provide a context for the third part of the research which presents a qualitative analysis of the data gathered through this study. The fourth and final section reports on how the Guidelines have been enriched by the views, experiences and wishes of the children consulted.

[1] The membership of the Group and its terms of reference can be found at www.coe.int/childjustice along with working documents of its meetings.

Note on the Author

Dr Ursula Kilkelly is a Senior Lecturer at the Faculty of Law, University College Cork, Ireland. She has undertaken numerous research projects and published extensively on children's rights in academic journals. She is author of *The Child and the ECHR*, 1999; *Youth Justice in Ireland*, 2006 and *Children's Rights in Ireland: Law, Policy and Practice*, 2008. For more information see http://www.ucc.ie/en/lawsite/staff/ukilkelly.

Acknowledgements

This consultation process required an enormous effort on the part of many people who gave willingly of their time and expertise to ensure children's voices could be heard in the process of drafting Guidelines on child-friendly justice. It is especially important to acknowledge the contribution of all the national organisations that organised focus group interviews and other opportunities for children to be consulted. The project depended on their willingness to be involved and more importantly, to commit the necessary resources to conduct the necessary consultation within a very short period of time. The consultation produced a far wider response than originally anticipated and thus produced huge amounts of data that had to be carefully managed. Council of Europe staff – especially Sabrina Cajoly and Joan Stafford – responded to this enormous logistical challenge by handling the material with efficiency and care. My research assistants – Kate Scannell, Jerry Kelly and Evelyne Bolster – were brought on board when the true scale of the project emerged and provided invaluable help with the questionnaires. But, most importantly, on behalf of all those involved, we must all express our sincere gratitude to the thousands of children all across the Council of Europe member states for participating in this process, for telling us so candidly of their experiences and for proving, once again, why children simply must be heard.

2. THE CONSULTATION PROCESS

2.1 Methodology and Process

From the start, it was clear that direct participation of children would add value to the process of drafting Guidelines on child-friendly justice. It was agreed also that the consultation would have to be organised with care and professionalism, and that it would require time and budgetary resources. In light of these considerations, and to maximise the number of children that could participate in the consultation within the short time available, the decision was taken to develop a questionnaire that would be administered by organisations working with children at national level.[2] The survey was drafted in association with a number of children's rights organisations and sent to the national partners for comments. It was then piloted with a small number of children before being placed on the Council of Europe website in several languages, accompanied by some explanatory information. Children were invited to fill it in and return it to the Council of Europe by e-mail. Children were also invited to communicate their views about the justice system in other ways, e.g. by sending in photographs and pictures. An on-line version of the questionnaire was made available (by the Children's Rights Alliance for England) and in addition, the questionnaire was disseminated widely among those who work with children nationally and internationally. Children's organisations were encouraged to have children complete the questionnaire, and they were also invited to use it as the basis for discussions – individual and group – with children on their experiences of the justice system. There was also some interest in completing the questionnaire in countries not member states of the Council of Europe (i.e. Kyrgyzstan). A very tight deadline of March 31st 2010 was imposed to ensure that the findings could be taken into account in the final drafting of the Guidelines in May 2010.

The relatively open-ended invitation issued to organisations and children to get involved in the consultation process meant that the consultation with children took many different forms, and the information was returned to the Council of Europe in a variety of formats. Some organisations facilitated the completion of the questionnaire by small numbers of children who have been involved with the criminal justice system. In Ireland, for example, the Ombudsman for Children spoke to four groups of children (29 in all) about their experiences of the justice system, including those in penal detention as well as unaccompanied children with experience of the asylum process. In other jurisdictions, the questionnaire was disseminated among children who had no, or little, direct experience of the justice system, as well as those who had. For example, the Office of the Serbian Ombudsman undertook an extensive consultation exercise visiting 20 municipalities in Serbia to speak to children in correctional institutions, schools and shelters.[3] Consultation exercises of various sizes were undertaken in numerous countries by international organisations like UNICEF and ENOC, Defence for Children International and the European Juvenile Justice Observatory, and each organisation responded differently to the invitation to gather children's views and experiences on the justice system. In total, almost 4,000 questionnaires from over 25 countries were returned to the Council of Europe – electronically and in hard copy - in a variety of languages.[4] Some questionnaires were

[2] These partners are listed in Appendix C and the questionnaire is produced in Appendix D.

[3] The Reports of the Irish and the Serbian Ombudsmen are set out in Appendix B.

[4] See a list of the number of questionnaires processed per country in Appendix A.

accompanied by reports of the consultation process, including collated answers to the questions posed, as well as other useful information which provided context for the views expressed or other background information. Other organisations simply forwarded the completed questionnaires.

In addition, focus group discussions were undertaken by NGOs like DCI (Belgium), Thémis (France), and the Children's Society, the Children's Rights Alliance for England and the Howard League for Penal Reform (England). A unique Masters' student-led consultation exercise, by the Kurt Bösch University Institute, (IUKB), gathered the views of children in detention in Switzerland.[5] These groups spoke principally to children in conflict with the law, including children in detention and children whose relatives are in prison. Small numbers of migrant children and children in foster care were also consulted. Thus, in addition to the questionnaire, a variety of methods were used to record young people's views and experiences, including semi-structured interviews, focus group discussions and to a lesser extent, creative methodologies such as art (i.e. drawings and paintings). Reports, and in some cases transcripts of these discussions were submitted to the Council of Europe and the diversity of reports and formats in which the views of children were submitted enriched the quality of the overall consultation. It was particularly important in filling in some of the gaps that emerged from the questionnaires and it was also useful to tease out the concerns and experiences of more marginal groups, such as migrant children, not represented explicitly in the questionnaires. The findings of these processes are set out separately below.

Once all the questionnaires were received, a template was drawn up to enter the data onto a spreadsheet so that the information on each questionnaire could be collated. For various reasons, not least the format of the questionnaire, this was not (nor was it ever intended to be) a purely scientific or statistical process. At the same time, care was taken to ensure that each questionnaire was individually read and taken into account, and this methodical process allows qualitative analysis to be undertaken. In total, 3,721 questionnaires were processed in this way. The analysis of all the data is set out below in Section 3.

2.2 Issues Arising from the Methodology

This section aims to identify some of the shortcomings of the consultation process for two reasons. First, it is important to take any limitations of the methodology or the process into account when interpreting the data produced. Second, it is important that the Council of Europe can learn from this exercise to ensure that future consultations can be improved.

Limits of the questionnaire

Although there are different views as to the most appropriate method to be used when researching with children, there is large scale agreement that the method must be appropriate to the issues being addressed. The questionnaire used in this study proved useful to generate a response from a large number of children within a very short time frame. It was thus entirely logical to choose this option here. However, it is important to be aware of the drawbacks of using a questionnaire in this context. First, the questionnaire method provides only limited opportunity for young people to fully express themselves. It asks children and young people to answer set questions (or rather questions that adults have

[5] See Appendix B for a list of all such reports submitted.

set), instead of allowing them to tell us their story, or to report what they have experienced in their own words and in their own way. Nor do questionnaires allow for follow-up or further discussion with children and young people about specific issues that arise through the consultation and so there is a static rather than a dynamic nature to the consultation process that can be frustrating for the respondents.

Child Appropriate Formats

Questionnaires can also be criticised because they do not allow for different levels of comprehension or understanding and so they are particularly challenging for young respondents, and those with linguistic or literacy difficulties. Unless they are supported through this process, children who do not understand or feel unable to answer certain questions may simply leave the relevant questions or sections blank. No conclusions can be drawn by those analysing the answers as to why this is so, and in this way, the opportunity to learn about the child's experience is lost. In this process, some national organisations reported their concern that certain sections of the questionnaire – notably part 4 that asked about a 'decision' that had been made about the child - were difficult for some children to understand. They reported the problematic nature of asking children about 'a decision' that had been made about them, and then asking them a series of questions about 'that decision', given that many children will have had many 'decisions' taken about them, not all of the important ones by those in authority. This may have led to some confusion among respondents. Other groups who facilitated children's completion of the questionnaire complained that it was too long and too complicated for many children to comprehend or complete. Nor could it realistically have been completed (at least not without substantial support) by very young children, children with literacy problems or children with disabilities.

Nonetheless, the questionnaire proved a useful means of communicating with a large number of children – most children completed the questionnaire in full - and national organisations were free to adapt the questionnaire and use different methodologies to engage with younger children or those with special needs. In fact, several national organisations did just that, using semi-structured interviews to discuss the issues in more depth with certain groups of children, and this is to be welcomed. However, it must become a priority in future exercises of this kind that appropriate methodologies – for children under 10 years, children with literacy and communication difficulties and children with disabilities in particular - are made available. More generally, children should be involved in the design of the methodology/questionnaire - perhaps through a children's steering or advisory group who could be involved throughout – which should then be fully piloted with specific groups of children in advance of their finalisation and general dissemination.

Closed Questions

When questionnaires are used to consult with children, it is considered problematic to have only closed questions (to which the respondent answers Yes or No). In this consultation, the limited time available – to translate and process the data collected – necessitated having a questionnaire with a majority of closed questions. Nonetheless, it was important that the children were given the opportunity throughout the questionnaire to provide additional information and to elaborate on their answers by completing the 'other' box at the end of each question. While many children took the opportunity to add comments in the open-ended sections, the vast majority of children did not use them to express themselves in any detail. It is useful in this context that some national organisations reported on the

process that surrounded the completion of the questionnaire, and where they did this it proved a useful way to supplement the data provided by the questionnaire.

Time Frame

The short time frame of the consultation process was also problematic. Although the response to the consultation was significant – and well beyond expectations - and significant flexibility was shown to those wishing to feed into the process and return questionnaires after the deadline, the short time-frame meant that not all those who wanted to could contribute. This is particularly true of national organisations that did not have sufficient time or resources to plan and organise consultation with children, which is a resource-intensive process even for those who work with children on a daily basis. It is very important, therefore, that the time and other demands involved in organising and undertaking consultation with children are taken into account in the planning and implementation of all future consultation projects.

Focus on the Formal Justice System

The questionnaire was designed to capture a wide variety of experiences of the justice system including the formal court process (criminal or family law matters), but also including decisions about education, health care and immigration for example. In reality, the completed questionnaires tell us much about children's experiences of the criminal justice system and the family law system but far less about children's experiences about decision-making in the healthcare, immigration and education spheres. This can be explained by a number of factors. Information supplementing the questionnaire and explaining its scope and purpose was provided, but it may have been cumbersome for those completing the questionnaire to access it when they needed it. Moreover, the questionnaire began by asking questions relevant to the formal, mainly criminal justice system (contact with courts, police, lawyers etc), and so this may have skewed the remaining answers. A related issue is that national organisations might themselves have understood the questionnaire to be about the judicial - criminal and family law – processes rather than aspects of the process before, during and after justice is administered. Thus, for example, many national organisations arranged for young people in detention or in other parts of the care or criminal system to complete the questionnaire. That is not to underplay the importance of hearing the voices of these children who are frequently absent from discussions on the reform of law and policy. Indeed, it is very welcome that the consultation exercise was able to hear the voices of these children who can otherwise be hard to reach. But it does, reflect, however, that the consultation engaged more with children who had experience of the formal justice system, than those who had not.

The Challenges of Cross-National Research

The challenges of cross-national research, incorporating cross-linguistic and cross-jurisdiction research, are well known. The different social, cultural and legal terms and concepts make it difficult to ensure that a research question will mean the same thing to a child in Brussels as it does to a child in Kiev. In this exercise, some of the national partners translated the questionnaire themselves and while many of the terms and questions used arguably translate well, it cannot be ruled out that the sense and context of some questions was changed by translation into another language. It is similarly possible that the sense of some questions changed depending on the specific national or even local context. Feedback from the national organisations on the context in which the consultation took place is important to respond to any such potential difficulties.

Administration of the questionnaires

It is ambitious to attempt to conduct research across 47 jurisdictions but the challenges involved are perhaps compounded when the 'principal investigator', i.e. the Council of Europe in this instance, does not have control over the research process at national level. It may be complicated further by the fact that the Council of Europe, which is relatively new to involving children in its standard-setting work, requests the assistance of national partner organisations, many of whom have considerable experience of consulting children directly but who may apply different approaches and standards in doing so. A number of important issues arise in this context:

1. First, the Council of Europe provided no guidance to national organisations as to how many children they should involve in the consultation process and how they should contact those children. As a result, the number of children who completed the questionnaires varied widely from one country to the next and included children in all manner of settings. Normally, this would raise concerns about sampling (i.e. how the children were contacted) and the lack of a proportionate geographical spread. However, the novel nature of this venture and its short time frame may be used to justify not adhering to these principles in this instance. Moreover, in relation to whether the sample is representative, it is arguable that the exercise was designed to gather the views of as many children as possible living in the Council of Europe member states, and so it is not (or perhaps less) relevant that it was completed by hundreds of children from Serbia, compared with only a handful of children from Hungary for example.

2. Adherence to ethical and children's rights principles is critical to the legitimacy of any process of consultation with children, and the integrity of its findings. In this process, however, little is known about how the consultation exercises were undertaken, what ethical procedures and principles were applied and in what setting the questionnaires were completed. Questions concern: what consent procedures were followed? How were ethical considerations taken into account? What child protection guidance was followed? Were official or other adult figures present during the consultation? Were children assured as to the confidentiality and anonymity of their answers? Were incentives offered to participate? Did the exercise take place in a neutral and safe setting? What support was provided to children in the completion of the questionnaires? It may well be that the highest standards of research ethics and good practice informed each consultation exercise undertaken at national level. However, it is likely that approaches and standards vary from one organisation to the next and from one country to the next, and thus without reports from national organisations detailing the process, it is simply not possible to know for certain. This is an undesirable situation, at the very least, and attention must now be focused on how to ensure such standards are implemented throughout any future consultation process undertaken by children's organisations under the auspices or on behalf of the Council of Europe.

2.3 Recommendations for Future Consultation with Children

Thus, although the Council of Europe is to be commended for undertaking its first consultation exercise with children, the effectiveness and appropriateness of future exercises

requires that lessons are learned from this process. In response to the concerns highlighted in the above section, the following recommendations are made:

- The decision to consult with children should, where possible, be taken at the earliest possible stage of a project, allowing time to plan and implement the consultation process in light of available resources and bearing in mind the intensive nature of consultation with children;
- Where questionnaires are considered an appropriate method of gathering the views of children, consideration should be given to how they might be supplemented by other methodologies which allow for a dialogue with children and a particular focus on specific issues and the needs of particular groups. Particular consideration should be given to consulting with children with disabilities;
- Questionnaires, where considered appropriate, should be designed with the input of children, piloted with a range of children from different ages, with different needs, and in different contexts and settings;
- Adapted and appropriate methodologies should be devised for engaging with children of different age groups and capacities. The Council of Europe should consider investing in the relevant software to ensure consultation exercises are made fully accessible to children;
- Partner organisations should receive clear guidance from the Council of Europe on the purpose of any consultation process, with clear parameters set for how many children the Council of Europe would like to see consulted, what ages, groups etc.
- Those organisations administering the consultation at national level should be asked to report back on the process, explaining how the sample was chosen, how ethical guidelines were observed and providing some context and overview of the results. They should also be required to give feedback, at a national level, to children whom they have consulted;
- As a matter of priority, the Council of Europe should adopt Guidelines for Researching with Children in order to set out how research conducted under its auspices and to inform its work, so that it meets ethical, professional and human rights standards. Many such examples exist nationally and internationally and so the Council of Europe could choose to endorse internationally accepted standards in this area. However, any formal guidance adopted should deal with:

    - Sampling and accessing children for consultation;
    - Consent and confidentiality;
    - Responding to child protection concerns;
    - Ensuring that consultation is children's rights compliant;
    - Handling the data collected;
    - Developing appropriate materials and methodologies;
    - Testing and piloting of methodologies;
    - Providing feedback to participants;
    - Identifying appropriate national and international partners.

- In any future consultation exercise, consideration should be given to streamlining how research data are returned to the Council of Europe. It may be suitable to develop a template or protocol to guide partner organisations on how to provide feedback on any consultation undertaken. This could:

    - Explain how the research guidance has been followed;
    - Explain how the children were selected to participate and why;
    - Detail the numbers of children who participated and provide their ages, gender, ethnicity, nationality, disability etc;
    - Set out the background and context to the findings, highlighting themes and trends.

- The necessity of having original questionnaires (or other primary research data) returned to the Council of Europe for processing should be considered on a case-by-case basis. Particular consideration should be given to how the integrity of the data will be maintained in any transfer from the national to the European setting. Responsibility for the translation of any data gathered should be made clear from the outset.

2.4 Summary

In summary, it is clear that the Council of Europe's first initiative to consult children directly had many positive features. Although the choice of a questionnaire had some drawbacks, it achieved the aim of ensuring a large number of respondents and despite some difficulties with its format, several thousand children of all ages and backgrounds completed it in full. The consultation process was clearly enriched by the additional consultation undertaken by national organisations and by the reports that were submitted on these processes.

The Council of Europe is uniquely placed to undertake cross-jurisdictional research of this nature in order to ensure its standard-setting work is informed by the views and experiences of children. However, if it is to ensure adherence to the highest ethical, professional and children's rights standards in the research undertaken on its behalf, and to fulfil its potential to provide leadership in this area, the recommendations made here should be given very serious consideration.

3. CHILDREN AND THE JUSTICE SYSTEM : A SHORT SUMMARY OF THE LITERATURE

Before outlining the findings of the consultation with children on child-friendly justice, it is important to acknowledge the research already undertaken to record and analyse children's experiences in the justice system. To this end, this section provides an overview of the principal research in this area, with a view to informing the empirical findings that follow. It begins with an outline of the legal and other imperatives of listening to children.[6]

3.1 Listening to Children

Article 12 of the United Nations Convention on the Rights of the Child has been described as the fundamental principle of the Convention and indeed of children's rights generally.[7] Article 12 imposes a duty on states to assure to the child who is capable of forming his/her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.[8] The provision, which is considered to have empowering qualities is important in its own right – in ensuring children are heard as part of decision making about them – and in the interpretation of other rights, including Article 3.[9] In that sense, it can be seen to have a transforming effect on the treatment of children, both in substance and by improving their experience of decision-making processes. In particular, requiring that children's voices are heard aims to raise the profile of children and their views, and ensure that they are treated with respect. The provision is unique in so far as it has both substantive and procedural effect, and it is important both taken alone, and as an enabler designed to facilitate the exercise by children and young people of their rights in other areas. The key to Article 12 is that it has two distinct but related parts: paragraph 1 places the general duty on the state to ensure that children have the right to express their views, and puts in place a dual test (in the form of age and maturity) with regard to giving effect to those views. Article 12(2) supplements the first paragraph by recognising that in order to ensure children are heard, they must be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative. Even though this particular requirement must bow to the procedures of domestic law, the provision is crucial nonetheless in laying down a benchmark on the child's right to participate in decision-making processes that concern him/her.[10]

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[6] This draws on research published by U. Kilkelly *inter alia* in *Children's Rights in Ireland: Law, Policy and Practice*, Bloomsbury 2008; *The Child and the ECHR*, Ashgate, 1999 and *ECHR and Irish Law*, 2nd Ed, Jordans, 2009.

[7] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, www.ohchr.org, para. 2.

[8] See A. Parkes, *Children and International Human Rights Law: The Right of the Child to be Heard* (Routledge-Cavendish, forthcoming).

[9] Committee on the Rights of the Child, above n 7, at paras. 70-74.

[10] There is now considerable literature available from a range of disciplines on the child's right to be heard. See *inter alia* R. Sinclair, 'Participation in Practice: Making it Meaningful, Effective and Sustainable', 18 *Children and Society* (2004) 106-118 and L. Lundy, "Voice" is not enough: the implications of Article 12 of the United Nations Convention on the Rights of the Child for Education' (2007) 33(6) *British Educational Research Journal* http://www.informaworld.com/smpp/title~content=t713406264~db=all~tab=issueslist~branches=33 - v33 927 – 942.

Various justifications are put forward for enabling that children are heard in decisions made about them.[11] The relevance of children's experiences and views, the importance of ensuring inclusive decision-making and the need to teach children about the values of democracy and citizenship are all arguments in favour of listening to children.[12] In family decision making, ensuring children have a say can secure their protection as well as their participation rights.[13] At the same time, taking the views of children into account in decisions made about them is good not just because of the added value it gives to the outcome, but because of the importance of process. As Mark Henaghan explains in the context of judicial family law decision-making, 'the reason for obtaining the child's views …is to listen to the child, to show respect to the person whom the decision is about'.[14] A similar point is made by Carol Smart and her colleagues who argue that 'children's viewpoints need to be included if family policy is to proceed from an ethical stance'.[15] Moreover, we know from a number of studies that it is important to children themselves that they have a say in family law decision making and in other areas of their lives.[16] Far from 'wanting their way', children want input into the decision-making process because they believe that it contributes to better decisions and to more workable arrangements about their care.[17]

Moreover, listening to children and facilitating their participation in discussion and decisions around their health care has been found to have therapeutic effects.[18] Children themselves have identified the importance of being heard by health professionals and in studies they have routinely explained the importance to them of being provided with age appropriate explanations and information to help them cope with the consultation and

[11] There is now extensive literature on the promotion of children's participation generally. See above note 4 and G. Lansdown, Promoting Children's Participation in Democratic Decision-Making (UNICEF Innocenti Research Centre, 2001) and Thomas, 'Towards a Theory of Children's Participation' (2007) 15 *International Journal of Children's Rights* 199-218 .

[12] See also the argument that children's involvement in decision-making in the area of healthcare has significant therapeutic benefits in U. Kilkelly and M. Donnelly, *The Child's Right to be heard in the Healthcare setting: Perspectives of Children, Parents and Health Professionals* (Dublin: Office of the Minister for Children, 2006), p 8.

[13] K. Röbäck and I. Höjer, 'Constructing Children's Views in the Enforcement of Contact Orders' (2009) 17(4) *International Journal of Children's Rights* 663-680.

[14] M. Henaghan and B. Atkin, *Family Law Policy in New Zealand* (Lexis Nexis, 2nd Edn, 2007), at p. 323.

[15] C. Smart, B. Neale and A. Wade, *The changing experience of childhood: Families and Divorce* (Oxford, Polity Press, 2001), at p. 156.

[16] See U. Kilkelly, R. Kilpatrick, L. Lundy, L. Moore and P. Scraton, *Children's Rights in Northern Ireland* (Northern Ireland Commissioner for Children and Young People, 2005) which found the right to have a say the most important right to children in Northern Ireland. In relation to family law, see for example, C. Smart and B. Neale, 'It's my life too – children's perspectives on post-divorce parenting' (2000) *Family Law* 63-169; M. Gollop, A. Smith and N. Taylor, 'Children's involvement in custody and access arrangements after parental separation' (2000) 12 CFLQ 383-399; H. Bretherton 'Because it's me the decisions are about' – children's experiences of private law proceedings' (2002) 32 *Family Law* 450-457 and P. Parkinson, J. Cashmore and J. Single, 'Parents' and children's' views on talking to judges in parenting disputes in Australia' (2007) 21 *International Journal of Law, Policy and the Family* 84-107.

[17] See J. Cashmore and P. Parkinson, *Children's and Parents' perceptions of Children's participation in Decision-making after Parental separation and Divorce'*. The University of Sydney Law School Legal Studies Research Paper 08/48 May 2008 available at http://ssrn.com, at p 9.

[18] U. Kilkelly and M Donnelly, (2006). See also I Coyne, 'Children's participation in consultations and decision-making at health service level: a critical review of the literature' *International Journal of Nursing Studies* (2008) 1682-1689.

treatment health care process.[19] As to how these aims might be realised, children have stressed the importance of staff training, particularly regarding effective communication with children, and of providing age-appropriate facilities in hospitals and health-care settings. The failure to appreciate children's capacity to participate in decisions about their health care can be related both to the role of parents – who seek to retain this decision-making capacity for themselves – and health professionals who may also consider their perspective to be the 'expert' one. Training, awareness raising and education are necessary to break down these barriers to facilitate the child's involvement in the process.[20] As in other areas, the way adolescents are treated by health professionals has been shown to be an important predictor of their satisfaction with healthcare.[21] Conversely, early and independent control of treatment decisions has been shown to result in poorer health outcomes and may be associated with children feeling depressed, isolated and abandoned.[22]

The scope of Article 12 of the CRC is broad insofar as it recognises the right of the child to be heard in 'all matters affecting the child'.[23] Given that such matters are decided in families every day, the Committee on the Rights of the Child has highlighted the importance of promoting the provision in the private family setting.[24] Those, notably parents, taking decisions about children within the private family setting – where the majority of these decisions are made - should be encouraged to take the views of the children affected into account. At the same time, it is the State's duty to facilitate children's participation in decision-making and in this regard, states have been recommended to encourage parents and guardians, through legislation and policy, to listen to children and give due weight to their views in matters that concern them.[25] States are also required to take steps to inform and support parents to ensure that parenting is informed by the child's right to be treated with respect, for their views to be heard and their evolving capacity support.[26] Article 12 thus has clear implications that go beyond how the State carries out its own functions in relation to children's decision-making; it also requires the state to ensure that parents do so effectively and must provide them with support to this end. Research has identified that parents' understandable desire to protect their children from conflict and from the risks associated with involvement in the decision-making process is a considerable obstacle to

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[19] Ibid.

[20] Gabe, Olumide and Bury, "'It takes three to tango': a framework for understanding patient partnership in paediatric clinics" (2004) *Social Science & Medicine* 59 1071-1079; Tates, Meeuwesen, Elbers and Bensing, "'I've come for his throat': roles and identities in doctor-parent-child communication" 28 (2002) *Child: Care, Health & Development* 109-116 and Young, Dixon Woods, Windridge and Heney, 'Managing communication with young people who have a potentially life threatening chronic illness: Qualitative study of patients and parents'(2003) 326 *British Medical Journal* 305-310.

[21] Beresford and Sloper, 'Chronically Ill Adolescents' Experiences of Communicating with Doctors: a Qualitative Study' 33 (2003) *Journal of Adolescent Health* 172-179.

[22] Angst and Deatrick, 'Involvement in Healthcare Decisions: Parents and Children with Chronic Illness' 2(2) (1996) *Journal of Family Nursing* 174-194.

[23] Article 12(1).

[24] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, www.ohchr.org, para 90. The Committee has highlighted that such an approach to parenting serves to promote individual development and enhance family relations. *Ibid*.

[25] *Ibid*, para 92.

[26] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, www.ohchr.org, paras 90-94.

children's participation.[27] Clearly, more needs to be done to promote awareness of the importance of listening to children.

Article 12 does not afford a higher status to listening to children depending on the seriousness of the decisions being taken – children's views are to be heard 'in all matters'.[28] Nor does it differentiate between children of different ages. The only condition in Article 12(1) is that the child be 'capable of forming his/her views'. The Committee has rejected that this requires that only children who have achieved a certain level of competence or capacity must be heard. Instead, it has highlighted that children of all ages and capacities can express their views, perspectives and experiences and that there are a range of methods and methodologies that can ensure that these are fed into the relevant decision-making process.[29] In this regard, Article 12 places the onus to listen to the child firmly on the adults concerned, rather than the child. Moreover, the child also 'has the right not to exercise this right' meaning that expressing views is a choice for the child, not an obligation.[30] This is entirely consistent with research that shows that children desire participation in decision-making that falls short of taking responsibility for these decisions.[31]

Thus, what is crucial – for children themselves and under the Convention - is that the filter of age and maturity applies only to the weight to be attached to the child's views, and not the hearing of those views in the first instance. In this regard, the Committee on the Rights of the Child has rejected that children without capacity have no right to be taken seriously,[32] stressing that compliance with Article 12 involves separate elements of first, hearing the child, and second, taking what has been heard into account in line with the child's age and maturity.[33] This has clear implications for decision-makers, including parents, in relation to relocation and means that children's involvement in such decisions cannot be limited to those deemed (by adults) to be old and/or mature enough for this purpose.

In order to implement the right in Article 12(1) to ensure that children's views are heard, Article 12(2) provides that the child shall be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. According to the Committee on the Rights of the Child, this covers judicial proceedings governing matters of residence and contact following separation or divorce and may also include alternative

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[27] See S. Tomanovic, 'Negotiating children's participation and autonomy within Families' (2003) 11 *The International Journal of Children's Rights* 51-71. See also U. Kilkelly and M. Donnelly (2006) .This was identified by children, parents themselves and health professionals in this study.

[28] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, www.ohchr.org, paras 26-27.

[29] *Ibid*, paras 20-21.

[30] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, www.ohchr.org, at para 16.

[31] See, for example, C. Smart and B. Neale, 'It's my life too – children's perspectives on post-divorce parenting' (2000) *Family Law* 163-169; M. Gollop, A. Smith and N. Taylor, 'Children's involvement in custody and access arrangements after parental separation' (2000) 12 CFLQ 383-399; H. Bretherton 'Because it's me the decisions are about' – children's experiences of private law proceedings' (2002) 32 *Family Law* 450-457 and P. Parkinson, J. Cashmore and J. Single (2007), at pp. 84-107.

[32] D. Archard, *Children's Rights and Childhood* (Routledge, 1993) and K.H. Federle, 'Rights Flow Downhill' (1994) 2 *International Journal of Children's Rights* 343–368.

[33] Committee on the Rights of the Child, *Implementing Child Rights in Early Childhood*, General Comment No 7 (2005). Un Doc CRC/C/GC/7/Rev.1 20 September 2006, at para 14.

measures like mediation and arbitration.[34] How best to implement Article 12(2) – whether to provide separation representation for children or to have the judge hear them directly – continues to be the subject of considerable debate. The conventional wisdom is that indirect methods of informing the court of children's views are 'greatly superior to the judge interviewing children directly'.[35] Not only are professionals regarded as better able to interview children, they are also seen as better qualified to interpret children's views in light of all the circumstances.[36] In some jurisdictions, however, the private judicial interview has become more acceptable in the absence of other mechanisms for hearing the views of the child. Those opposed to judicial interviews on these and other grounds are being challenged by increasing discussion in a range of jurisdictions of the potential benefits of undertaking such interviews as part of the overall decision-making process. Empirical research with children and young people, has found that children favour speaking directly to the judge because they want their views heard by the ultimate decision-maker.[37] Admittedly, direct involvement of the child in this way can be threatening to the parent who fears the child will express a preference for the other parent, either genuinely or under duress.[38] However, it is important to think constructively about how these obstacles can be overcome rather than settling for mediated communication between children and decision-makers, when this is not children's clear preference.

3.2 The Criminal Justice System

Case law of the European Court of Human Rights makes it clear that children have a right to participate effectively in proceedings which determine any criminal charge against them.[39] The Court has also explained that while children do not have to understand minor details of the criminal process, they must understand the broad purpose of criminal proceedings and what is at stake for them in that process.[40] Research on children's experiences makes clear that there is best practice in some jurisdictions. An analysis of the Dutch youth court shows that 'the proceedings are first and foremost a dialogue between the juvenile judge (magistrate) and the young offender.'[41] While legal jargon and court-specific abbreviations are frequently used, the practice of the judge in the Dutch youth court is to ask at various points whether what they are saying is clear to the young offender. The Dutch experience is also characterised by a moral dialogue whereby the juvenile court usually undertakes some discussion with the offender about the consequences of his/her wrongdoing and in most cases puts questions to him/her that attempt to stimulate feelings of empathy for the victim and reflect on the impact of the offence.[42]

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[34] Committee on the Rights of the Child, *The Right of the Child to be Heard*, General Comment No 12 (2009) UN Doc CRC/C/GC/12, 20 July 2009, at para 32.

[35] J. Cashmore and P. Parkinson (2008), at p. 49.

[36] This view appears to be one shared by the European Court of Human Rights. See *Sommerfeld v Germany* [GC] (2004) 38 EHRR 35 and *Sahin v Germany* [GC] (2004) 36 EHRR 565.

[37] J. Cashmore and P. Parkinson (2008) at p. 51. See also N. Crichton, 'Listening to Children' October [2006] Fam Law 849-854 where a District Judge expresses the same impression of personal experience.

[38] See details in M. Freeman, *Relocation. The Reunite Research*. Funded by the Ministry of Justice. July 2009, available at www.reunite.org, at pp. 18-20.

[39] See *T v UK* and *V v UK*, judgment of 16 December 1999; (2000) 30 EHRR 121.

[40] See *SC v UK*, judgment of 15 June 2004.

[41] I. Weijers, 'Requirements for Communication in the Courtroom: A comparative perspective on the Youth Court in England/Wales and the Netherlands' 4(1) *Youth Justice* (July 2004) 22-31.

[42] i. Weijers, 'The Moral Dialogue: A Pedagogical Perspective on Juvenile Justice' in Weijers, I. & Duff, A. *Punishing Juveniles Principle and Critique* (Oxford: Hart Publishing, 2002), pp 135-154.

By contrast, children in the Irish Children's Court are not frequently actively involved in the criminal process and in fact struggle to understand proceedings at a number of levels. Studies have found that children do not understand and frequently are inactive participants in court proceedings failing to understand the significance of what is decided and its consequences for them.[43] In one Irish study, for example, 39% of the 120 professionals surveyed said that children rarely or never understood their bail conditions.[44] According to some professionals, there was a perception among judges that young people understood the requirements of bail because some of them appeared in court on a regular basis. Professionals who worked directly with young people discounted this view, suggesting that it did not take account of the educational and cognitive difficulties experienced by many young people appearing before the courts. Evidence about the extent of speech and language difficulties experienced by young offenders also supports the view that special consideration needs to be given to the particular needs of young people going through the criminal process.[45] The evidence as to the prevalence of mental health difficulties and poor emotional intelligence also require that particular skills be brought to bear to ensure communication with this group is effective.[46]

The lack of information leaves young people at a disadvantage against the police, prosecutors, judges and others and can in fact compound their distrust of authority and perceptions that the process in which they were involved was unfair or unjust.[47] Hinds' study of the issue in the Australian territory of New South Wales found that, consistent with research with adults, 'perceptions of police use of procedural justice are the primary factor shaping young people's assessments of police legitimacy'.[48] In particular, children's normative beliefs that police use fair procedures in encounters with young people were the most significant influence in the shaping of their attitudes about police legitimacy. Hinds notes that police use of fair procedures entails giving young people an opportunity to have their say before making a decision, being treated in a neutral and consistent way, and being treated with dignity and respect.[49]

In conclusion, there is growing awareness about the importance of engaging with children and young people on matters that affect them through largely by the legal obligation set

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[43] U. Kilkelly, 'Youth Courts and Children's Rights: the Irish Experience' 8(1) *Youth Justice* (2008) 39-56.

[44] Seymour and Butler, *Young People on Remand* (Dublin: Office of the Minister for Children and Youth Affairs, 2008).

[45] See Bryan, Freer and Furlong, 'Language and Communication difficulties in Juvenile Offenders' (2007) *International Journal of Language and Communication Disorders* 42:5 505-520. For some assistance on this issue see *The* Communication Trust, The Dyslexia SpLD Trust and the Autism Education Trust, *Sentence Trouble* available at http://www.ican.org.uk/communication%20trust/Youth%20Justice/~/media/Communication%20Trust/Youth%20Justice/Sentence%20Trouble.ashx.

[46] See for example, O'Reilly and Hayes, *Emotional Intelligence, Mental Health and Juvenile Delinquency* (Juvenile Health Matters, 2007) available at www.juvenilehealthmatters.com.

[47] *Rachel Evans, Janet Jamieson, Dave O'Brien, Steve Tombs and Joe Yates, Section 30 Dispersal Powers: Emerging Findings from* Merseyside' *The Howard League for Penal Reform. Early Career Academics Network Bulletin February 2010. Issue 2, pp 3-9*, available at www.howardleague.org.

[48] Hinds, 'Building police-youth relationships: the importance of procedural justice' *Youth Justice* (2007) 195-209, at 203.

[49] Hinds, *ibid.*

down by Article 12 of the Convention on the Rights of the Child. Increasingly, researchers have attempted to gather the views of children and young people who have experience of the formal justice systems. A picture is slowly emerging about the quality of this experience for children and young people. While more research is needed, what is clear from the literature to date is that:

- Children do not always understand formal decisions made about them and these difficulties can be compounded for those with learning and mental health difficulties;
- Children want to be involved more in the decisions made about them and want assistance and support to this end;
- Children do not want to be the arbiter or final decision-maker, but they do want to be taken seriously. They see important benefits associated with their involvement related to the quality of the decision made;
- It is increasingly apparent that, at the appropriate time, children want access to the ultimate decision-maker rather than having their voice moderated by a third party;
- Adults working with children (frequently those who are unspecialised) do not always fully appreciate the difficulties under which children labour and mistake their familiarity with the process (and street wise attitude) for understanding of the criminal justice process;
- Children themselves recommend specialization among those who work with children, particularly training in how to talk to children.

These themes flow through the findings of the Council of Europe's consultation also. As the following section explains, the empirical data gathered through the completion of the questionnaires both adds to and complements this picture in an important and very useful manner.

4. THE VIEWS AND EXPERIENCES OF CHILDREN

In total, approximately 3,700 children from over 25 countries completed the Council of Europe's questionnaire on child-friendly justice. The following is an overview of the responses that children gave to the various questions they were asked. For ease of reference, the section uses the headings and question numbers of the questionnaire.[50]

4.1 About the children

The questionnaires of 3,721 children were taken into account in the data summarised below.

Countries:

Children from over 25 countries completed the questionnaire. The countries are listed in Appendix A below.

Age (Q 1.1):

The respondents ranged in age from a small number of children under 5 and under 10 years, to the vast majority who were between 11 and 17 years. Just under half of the children who participated were between 11 and 15 years (42%) and just over half (52%) were between 16 and 17 years. Just over 3% were between 6 and 10 years with only a tiny number of children (0.1%) under five completing the questionnaire.

Gender (Q 1.2):

The children who completed the questionnaire were divided fairly evenly between boys and girls, with approximately 43% of the questionnaires completed by girls and 57% completed by boys.

Disability (Q 1.3):

The vast majority (approximately 84%) did not consider themselves to have a disability or special needs (Q 1.3) with 9% answering 'yes' to this question.

Public Building (Q 1.5):

Children were asked whether they had ever been inside an official building and they were given several options. Most children (2,094) reported having attended at a police station, whereas 1,480 children said that they had been in court. Relatively even numbers reported having been in a lawyer's office (895), a care home (876) and a detention centre (746). Children were asked why they attended the public building in question and many replied that they 'had been in trouble', were there 'because of my parent's divorce' or as a witness. While most of the children who answered positively to these questions had attended the public building due to their direct contact of the justice system as offenders, victims or as a result of their parents' legal separation, small numbers indicated that they were there, for example, to collect an official document, such as a passport, to visit someone that they knew or for educational purposes, e.g. to undertake a mock trial.

[50] The questionnaire is reproduced in Appendix D below.

Contact with a Person working in the Legal System (Q 1.6):

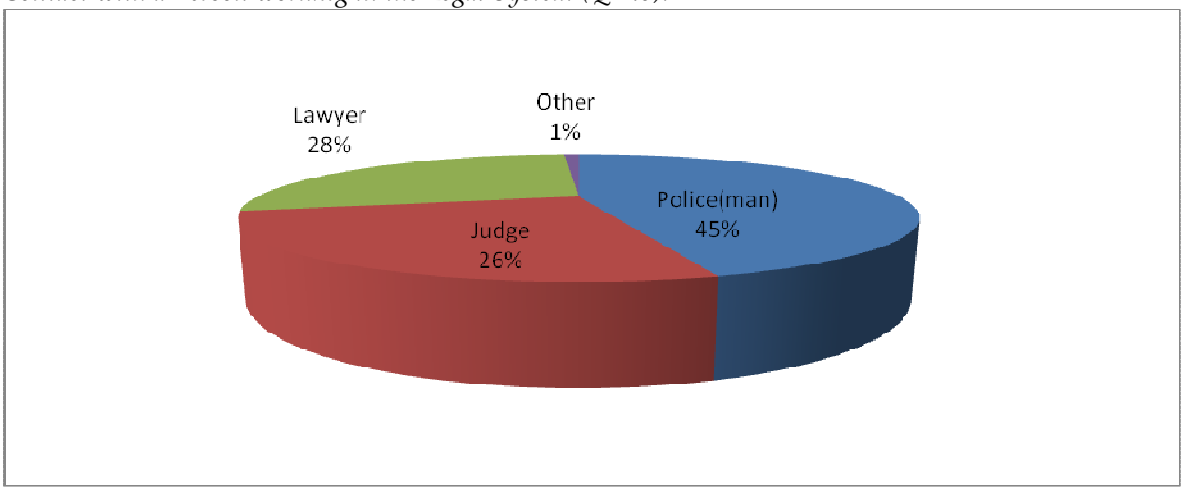

Figure 1: Have you ever met a person who works in the legal system?

As this figure indicates, those who answered in the affirmative to whether they had met a person working in the legal system were most likely to have met a police officer. Relatively smaller numbers had met a judge (26%) or a lawyer (28%). The small number who completed the 'other' category tended to refer to either a prosecutor or a probation officer.

It is evident from this data that most children who completed the questionnaire had had direct contact with the justice system, either civil (for example, family law matters) or criminal (as either a victim or offender). Although it is difficult to say for certain, it would appear that a large number of children also had what can be described as occasional or general contact with the formal justice system namely through their interaction with the police, in their communities. This highlights the especially important role that the police play as the principal point of contact between children and the justice system, even for those who never have deeper involvement.

4.2 Knowing your rights

This section asked children about their experiences interacting with the justice system. Children who had responded 'yes' to questions 1.5 or 1.6 were asked whether they understood what was going on at the time and/or would have liked to have been given more information about their rights.

Understanding (Q 2.1):

Where they had been in an official building or met an official person, the vast majority of children (85%) admitted to understanding what was going on at the time. 15% said that they did not.

More information (Q 2.2)

At the same time, as the figure overleaf shows, a similarly high proportion of children responded that they would like to have more information about their rights.

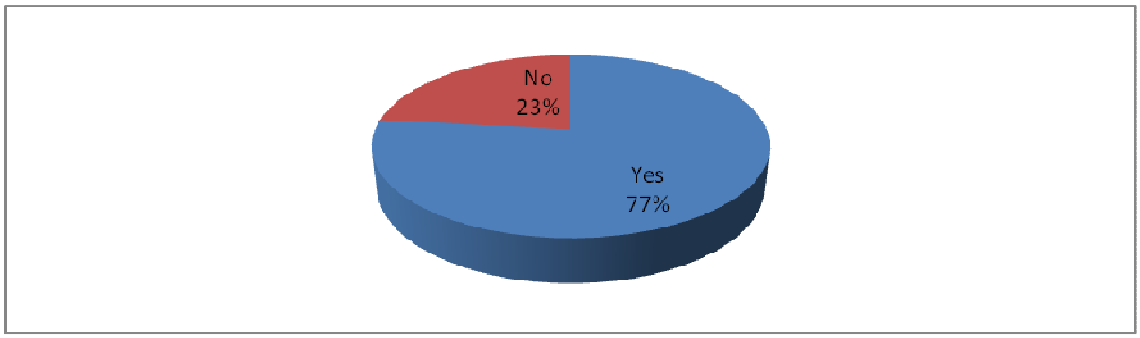

Figure 2: Would you like to have been given more information about your rights?

This reflects a very strong demand from children for greater access to information about their rights, and suggests that this exists regardless of whether they had understood what was going on in any previous encounters with the justice system.

From Whom? (Q 2.3):

Children were next asked two questions about where they wanted to get this information from. The first question (2.3) asked who they would like to receive this information from. Children were given the choice of 'yes', 'no' or 'don't know' here. Thus, children who answered 'no' can be taken to have expressed a definitive (negative) view against a particular person. The chart expresses this clearly.

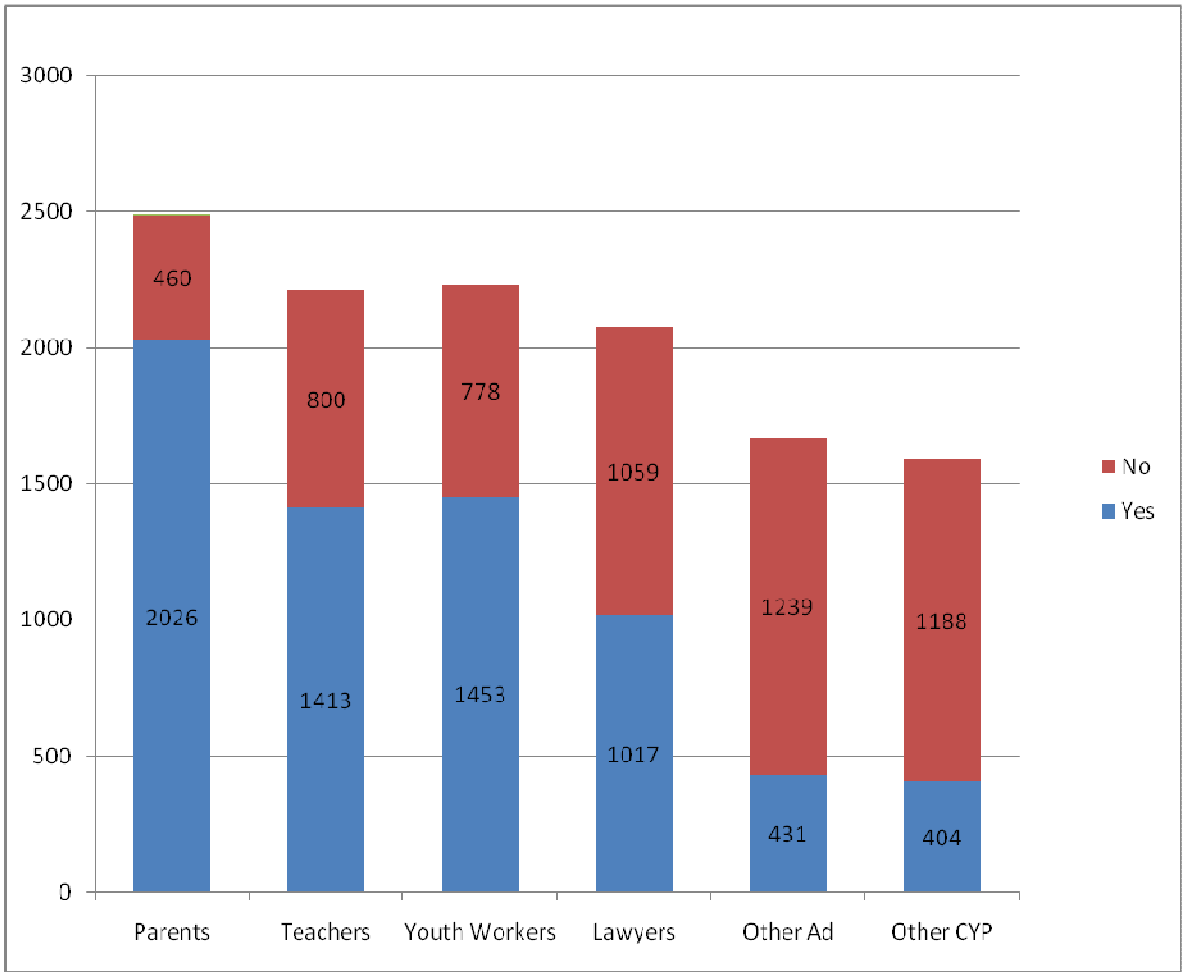

Figure 3: Who would you like to give you this information?

In particular, it is clear that most children want to receive this information from their parents although significant numbers of children also want to receive this information from teachers and youth workers. Lawyers are the next most popular choice, although lawyers also receive the highest number of 'no' votes of all categories here. Overall, it is clear that children want to receive this information from people close to them. This is evident in the 'other adult' and 'other child' categories also where children indicated that they wanted to receive this information from people that they trust, both adults and peers. Those who appeared in these latter categories included independent children's commissioners, and on occasion, children indicated that they wanted information from those in specific settings, like police officers (i.e. when they had been arrested) and staff in care homes or in detention centres. Children clearly also value the support and advice provided by other children (siblings and friends) especially those who understood what they were going through and/or had had a similar experience. They indicated 'siblings', 'pals', 'peers' here as well as people who have been trained or who work with NGOs to deliver this information. Overall, the answer to this question indicates in strong terms that children want information about their rights from people that they trust and they also welcome peer support. While this can vary from one person to the next (some will trust their teacher or youth worker, while others in a similar situation may not), it is clear that children consider their own families to be the most trusted source for information.

More Information (Q 2.4):

As illustrated in Figure 4 overleaf, children were asked where they would like to get more information about their rights and the most popular answer was 'on-line' through websites, social networking sites and email. This was followed closely by 'television', and thereafter, information provided 'in my community' (which some organisations thought was a difficult concept to grasp) and 'in local services' like the doctor's clinic, police stations and in council buildings, were the next most popular choices. Children also want information from 'advice centres' and they would appear to include special children's services and schools here. They are also enthusiastic about it being conveyed to them in magazines and newspapers. They are far less interested in receiving information about their rights on 'radio', and, somewhat surprisingly, the least popular choice was by means of a 'telephone helpline'. The low rating of the telephone helpline may be explained, perhaps, by a lack of awareness of what this is and/or whether such a service could be accessed free of charge and anonymously. In any event, it is clear that children want information on their rights to be made available to them through a range of services including those targeted and adapted specifically to their needs and circumstances. Other suggestions made in the 'other' category were that children should receive such education as part of school education or provided, in particular, by an ombudsman for children's office.

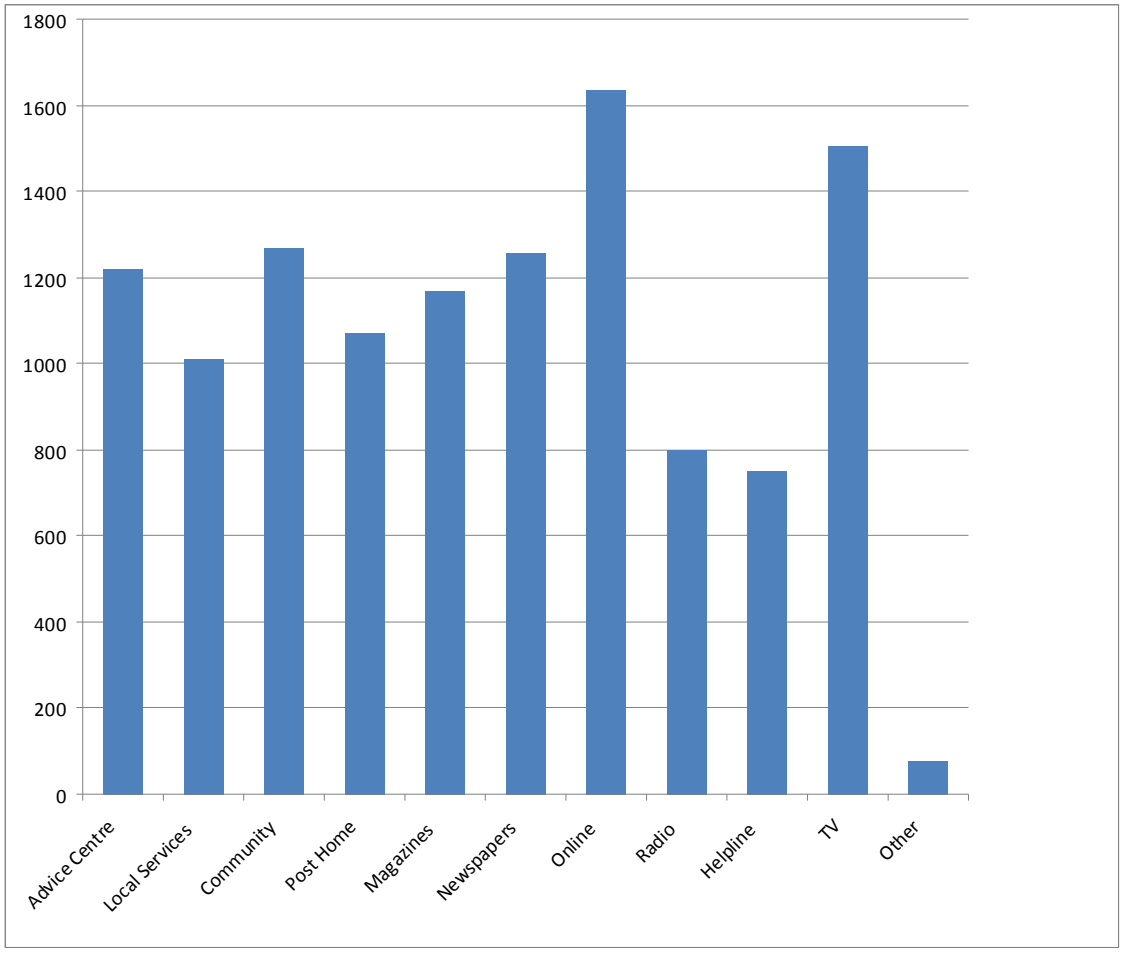

Figure 4: Where else would you like to get information about your rights?

4.3 Getting justice

This section asked whether children would tell someone if they were unhappy with how they were being treated and asked them to give details of who they would tell and if they would not, why not.

Would you tell? (Q 3.1):

The majority of children (80%) who responded said that they would tell someone if they were being treated badly or were unhappy with their treatment. However, a considerable number of 20%, or one in five children who answered, said that they would not tell anyone.

Who would you tell? (Q 3.2):

Children were asked to identify who they would tell either 'definitely' or 'probably'. As to who they would tell, the answer that received the highest amount of support (the highest numbers of 'yes definitely' at 1,772 and 'yes probably' answers at 454) was parents or carers. This was followed in equal measure by friends - 1637 children would 'definitely' tell a friend and 633 'probably' would - and siblings 1257 'yes, definitely' and 552 'yes, probably' answers. This makes it unequivocally clear that children's family and social circle is the single, most important source of support to them when they are in difficulty. Virtually all other categories – including official or public persons, like health workers, teachers, youth/social workers, police officers and lawyers - fared very badly indeed, receiving high and equal numbers of deliberate 'No' answers (as opposed to the question not being

answered at all or an 'unknown' being given). For example, a total of 735 children said they would either 'definitely' or 'probably' tell a police officer, whereas 1,283 said they would not. Similarly, 847 children said that they would tell a lawyer, whereas 1,215 children said they would not.

This both reinforces the importance to children of family and friends and makes clear that they do not trust public officials, even those assigned to their care or protection, sufficiently to disclose to them any unhappiness about how they are being treated. It is particularly interesting that healthcare professionals do not enjoy the trust of children who completed this questionnaire. The highest number of 'no' answers (1,657) was given to phone counsellors, while a further 1,250 said they would not tell a healthworker if they were unhappy with how they were being treated. Although there are clearly exceptions to the rule here, the data nonetheless present a very significant challenge to those working with children in any kind of official capacity with regard to developing and maintaining positive relationships of trust with them. It is also a clear challenge to those seeking to reach out to children in need or at risk.

Why not tell? (Q 3.3):
The next question attempted to explore why children kept their concerns about their welfare to themselves and asked them to identify why they would not tell anyone that they were unhappy with their treatment. They were given several specific options and an open choice. The most popular reason given here was that they felt that they could deal with the problem themselves. Although this clearly depends on the context, several children explained this answer in terms of an embarrassment or general anxiety about divulging a weakness or vulnerability to another person. It might also be associated with the self-reliant nature of children who have learned, through adversity, to be independent of others. While at one level such resilience is to be encouraged, it is clearly a concern that some children are willing to shoulder the burden about their own welfare.

Although there was little to separate out the other reasons identified, the following chart identifies that the next most common reasons for not telling others were: that they would be too scared of what might happen to their family; that they feared that their confidentiality would be breached by telling someone without their permission; that they had a previous bad experience of asking for help, or that they either would not be believed, would not be listened to, feared punishment or felt they had no one they could tell. Focus group discussions would have been useful to tease out some of these issues and to seek further clarification for the answers given but in any event it is clear that children's past experiences and their current perceptions about how they will be received are important indications of whether they will seek help when they need it. Several measures are necessary to build and maintain children's faith in the adults and institutions that have responsibility and capacity to provide them with support when they are in trouble.

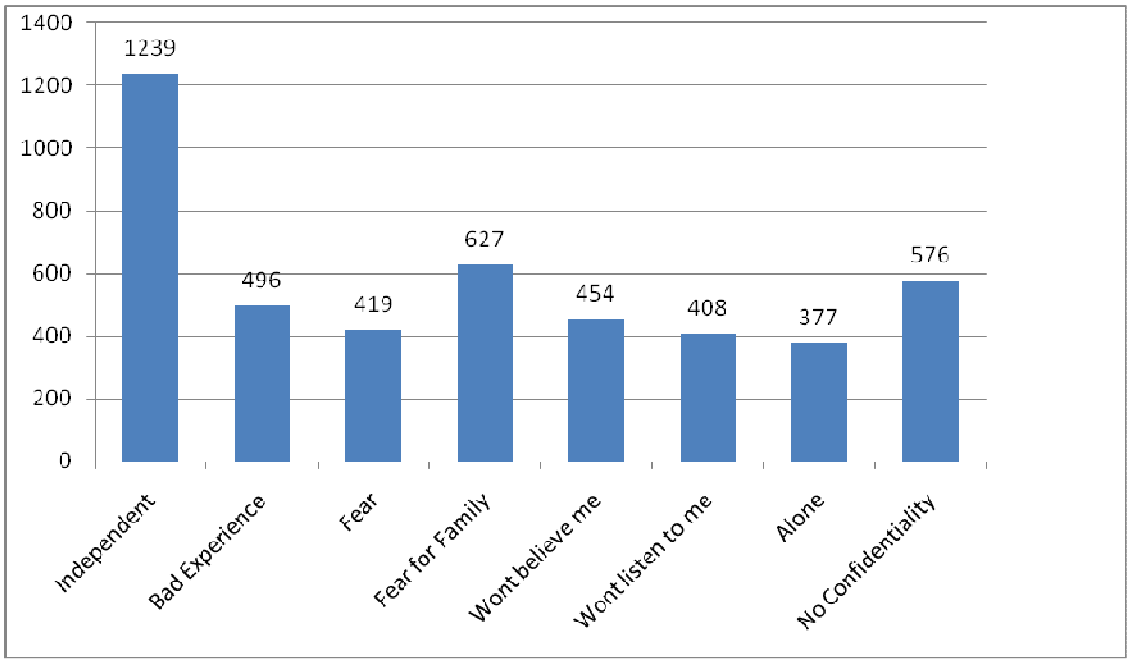

Figure 5: Why would you not tell anyone that you were unhappy with your treatment?

4.4 Decisions made

This part of the questionnaire asked children about decisions that had been made about them such as where they should live, what should happen if they break the law etc. It asked who made the decision, what the decision was about, how important it was, whether the child was present and whether it was understood. It was considered the most problematic part of the questionnaire according to some partners either because it required children to identify one decision that affected them, when frequently their care by others requires numerous such decisions, and/or they did not associate with the term 'decision', associating it with an 'order' or 'report'. The point was also made by some partners that the decisions that impact most heavily on children are frequently made not by an official person, but by their parents and so this might have caused some confusion as the questionnaire did not provide this option. Nonetheless, many children completed this part of the questionnaire without difficulty, ticking all or any or the options that they considered relevant. This is set out most clearly in Figure 6.

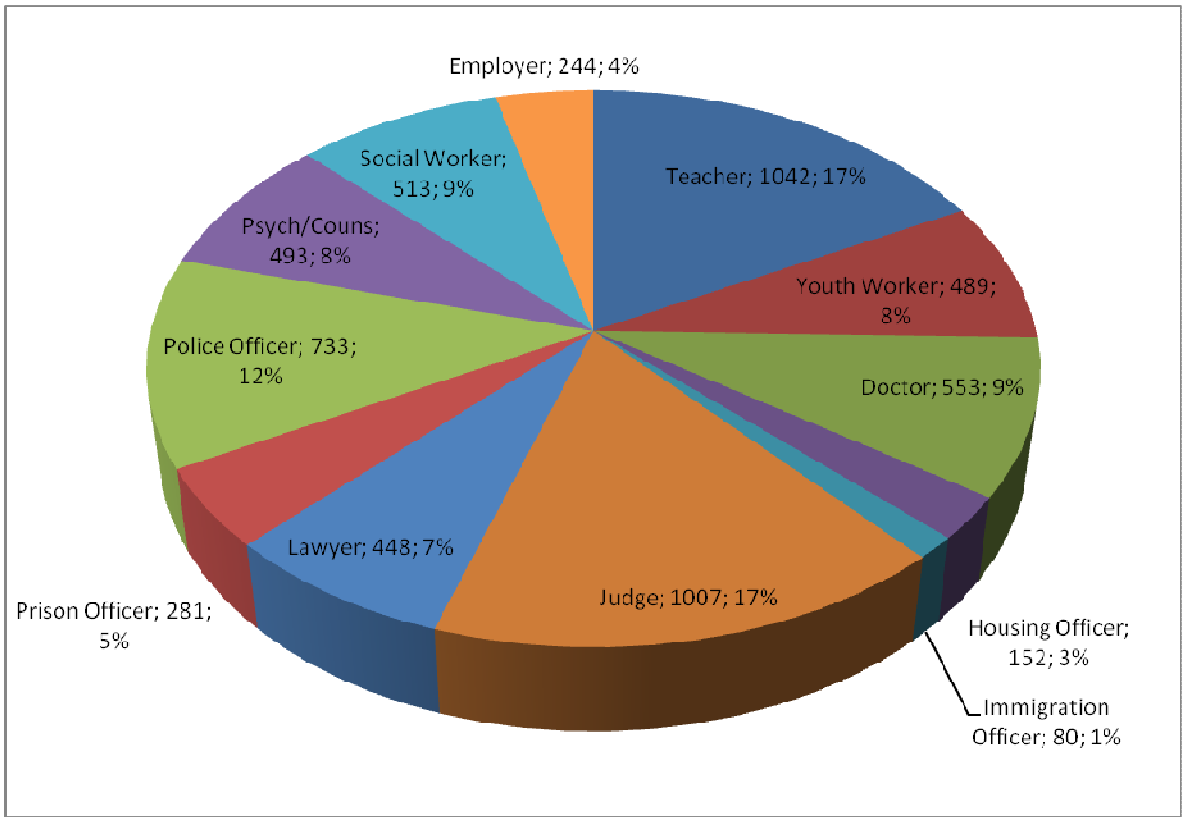

Figure 6: The person or people that made a decision that affected you?

What was the decision about? (Q 4.2):

In terms of what the decision was about, the children were given a wide range of issues to choose from including admission to care, length of detention, education, custody/access, immigration status and health care. Many children ticked several categories and the results are an even spread across alternative care, school discipline, education, health care, criminal process, and custody/access issues. Again, the range of issues is most clearly viewed in Figure 7 where it can be seen that the decisions that affected most respondents concerned Education, including school exclusion from school or college (10%) and School Discipline (10%). Health also took up 10% of answers with 'whether I committed a crime/what sentence I should get' attracting 7%, while 'my parents splitting up' (6%), 'where I should live' (6%) and 'contact with parents' (5%) were also popular answers.

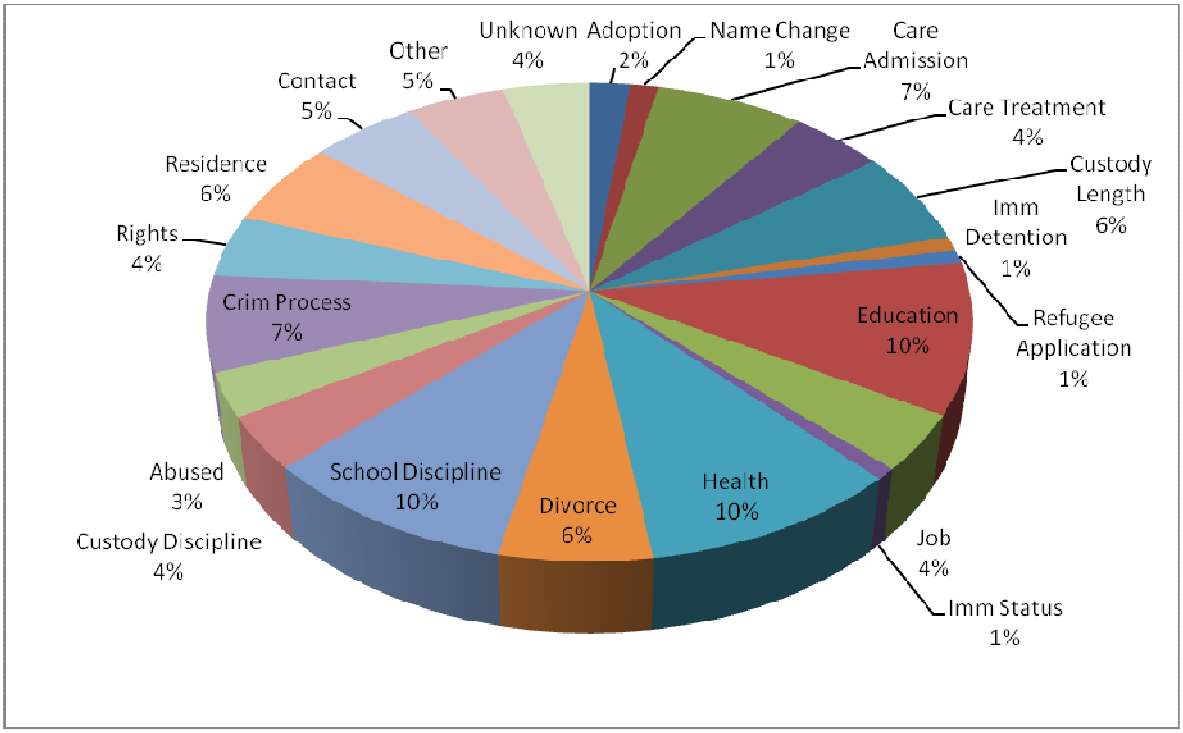

Figure 7: What was the decision about?

Importance of the decision (Q 4.3):

When asked to rate the decision as either not important, important or very important, the majority (51%) considered the decision they were referring to be important. 27% of children considered the decision to be 'very important' whereas 22% of respondents considered the decision to be 'not important'. It is difficult to relate these answers to the questions that reveal what the decisions were about, not least because children frequently ticked many categories in Q 4.1 and 4.2. Thus, while it is difficult to cross-refer in any certain way, a strong impression formed from reading through the questionnaires is that children were more likely to consider issues related to discipline and offending behaviour as 'not important' and issues relating to their family relationships (care, contact, divorce) as very important. This is consistent with the other data in the survey that indicates the strong association with family.

Were you present? (Q 4.4):

Children were asked whether they were present when the decision was made. Of those who answered, almost a majority (49%) said that they were. A further 31% responded that they were not there, whereas 20% said that they could not remember. This information would arguably be more significant if we knew with certainty the substance of the decision being made. Nonetheless, the indication is that children are present half the time when decisions are being made about them. Relating to Question 4.3, when over two thirds of child respondents (68%) considered that the decision made about them was either 'important' or 'very important', it is not unreasonable to conclude that children perceive that decisions are being made without them being present.

Prior explanation? (Q 4.5):

Less than half of those who responded to this question (47%) said that they were offered an explanation as to what was going to happen prior to the decision being taken. Over a third

(37%) said that no prior explanation was received and 16% said that they did not know or could not remember.

Asked for views? (Q.6):
Almost half (47%) of those who answered this question, as to whether they were asked for their views, said they had. 37% said that they had not been asked and a further 16% said they could not remember.

Views taken seriously? (Q 4.7)
Children were then asked whether their views were taken seriously during the process. This clearly allows for a subjective judgement on the part of the child as to whether he/she felt listened to or heard. Just over one third (36%) of the children who responded felt that their views had been taken seriously, whereas 34% of children expressed the view that they did not feel listened to during the process. A further 30%, perhaps more realistically, expressed the view that they did not know whether their views were taken into account. The relatively high number of 'don't knows' here may suggest a lack of involvement in the process or, more specifically a lack of feedback or response to the views expressed by the child, including a failure to explain to the child the weight attached to his/her views during the process.

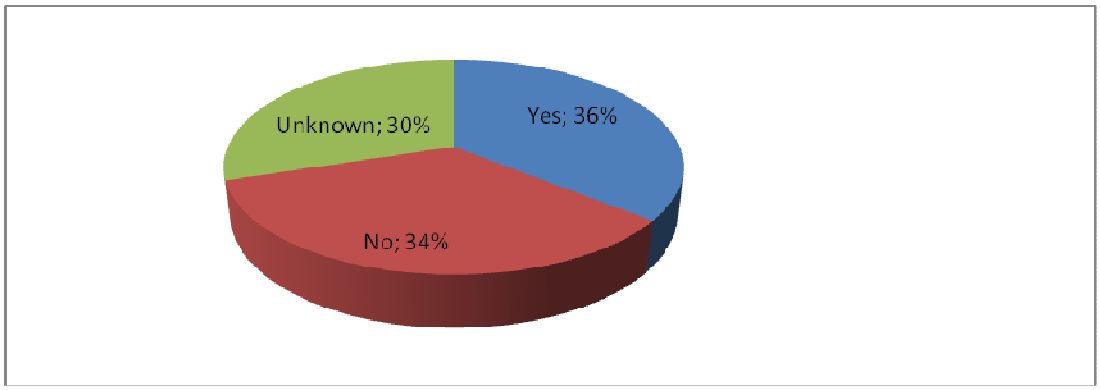

Figure 8: Were your views taken seriously?

Treated fairly? (Q 4.8):
It is useful then to compare the number of children who reported being satisfied that the decision taken was a fair one. This is represented as follows:

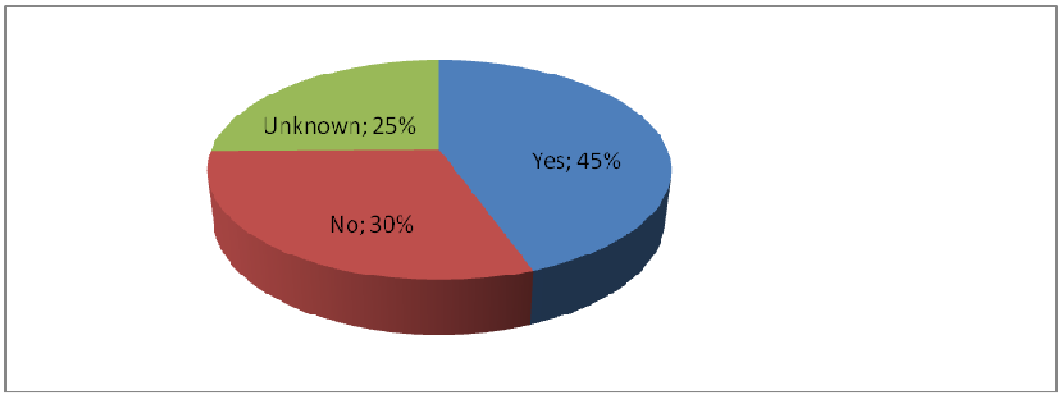

Figure 9: Did you feel that were you treated fairly?

It is notable that 45% considered that they were, whereas a further 30% felt they were not, and a large proportion of 25% of respondents did not know, further suggesting a possible gap between the decision made and its explanation to the child or young person affected.

Important to hear views (Q 4.9):
The questionnaire asked children whether they considered it important that the person making the decision heard their views. The vast majority (82%) of respondents considered that it was important that they were heard, whereas the remaining respondents were evenly divided between those who did not think it was important (8%) and those who did not know (10%).

How would you like to be heard? (Q 4.10):
Importantly, children expressed strong views as to how they would like their views to be heard, with the overwhelming response being that they want to speak directly to the person making the decision. Not only did fewer children express the view that they wanted their parents, their lawyer or another adult to speak for them, they actually expressed a negative opinion in this regard to the effect that twice as many respondents ticked 'No' to these options as ticked 'Yes'. They were more evenly divided (between Yes and No) with respect to whether they wanted the help of another person without giving much information as to who this person might be.

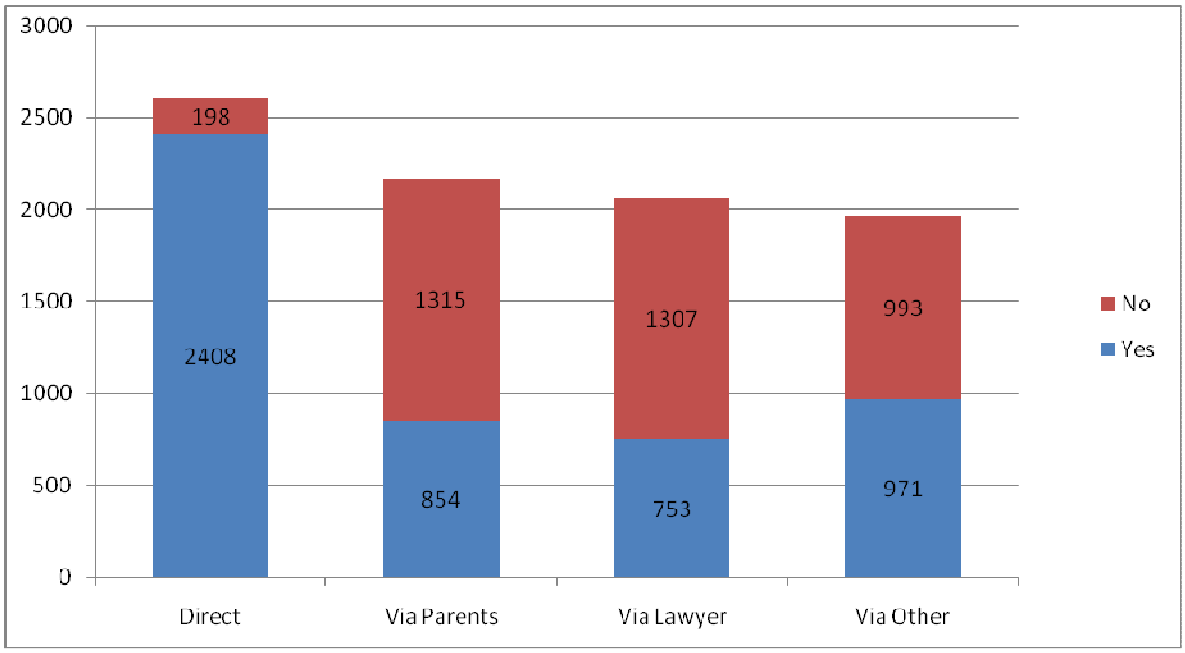

Figure 10: How would you like to be heard?

Were you supported? (Q 4.11):
The questionnaire next asked whether there was anyone there to support the young person and to ensure that what was going on was understood. Here, a significant majority (two thirds approximately, 63%) answered in the affirmative, suggesting that they had such support, although it is not clear whether that person was a relative or a professional such as a lawyer (these were the suggestions made in the question). A fifth of respondents (21%) said that they had no such support, whereas 16% could not remember.

Was the setting safe and suitable? (Q 4.12):
The next question asked whether the setting in which the decision was taken was safe and suitable for children. Approximately 51% of respondents considered that it was, with the remainder divided evenly between those who disagreed (23%) and those who did not know or had no opinion (26%).

What would have helped (Q 4.13):
As to what would have helped, the vast majority of the respondents identified the option of having a person of their choice with them (shown as 'company' below). In relation to the other options – remaining anonymous ('anon') and 'nothing would help' ('nothing') – a significant number of respondents chose to reject those than to accept them as choices. The small numbers who offered their own solutions suggested that the setting should be more child friendly or that the professionals involved should show them more respect.

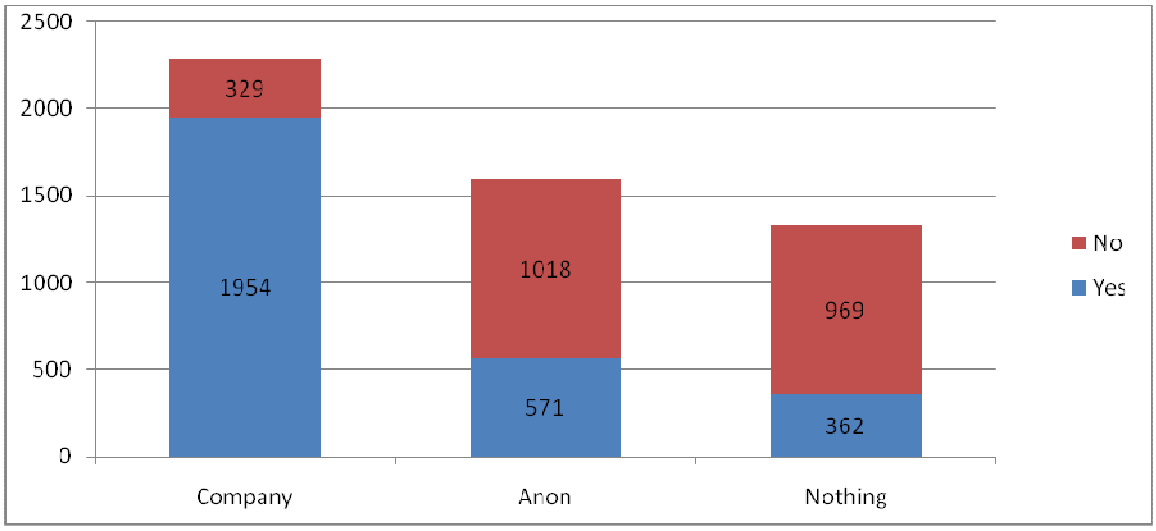

Figure 11: What would have helped make you feel more safe?

Decision understood? (Q 4.14):
Two thirds of respondents (66%) replied that they had understood the decision made about them, with equal numbers saying either that they did not (16%), or that they were not sure (18%).

Decision explained (Q 4.15):
In a similar vein, when asked whether the decision had been explained to them, two thirds (66%) of the respondents (identical to those who had understood the decision) said that it was. By contrast, one fifth (19%) of the children who answered this question said that the decision had not been explained to them.

Explained by whom? (Q 4.16):

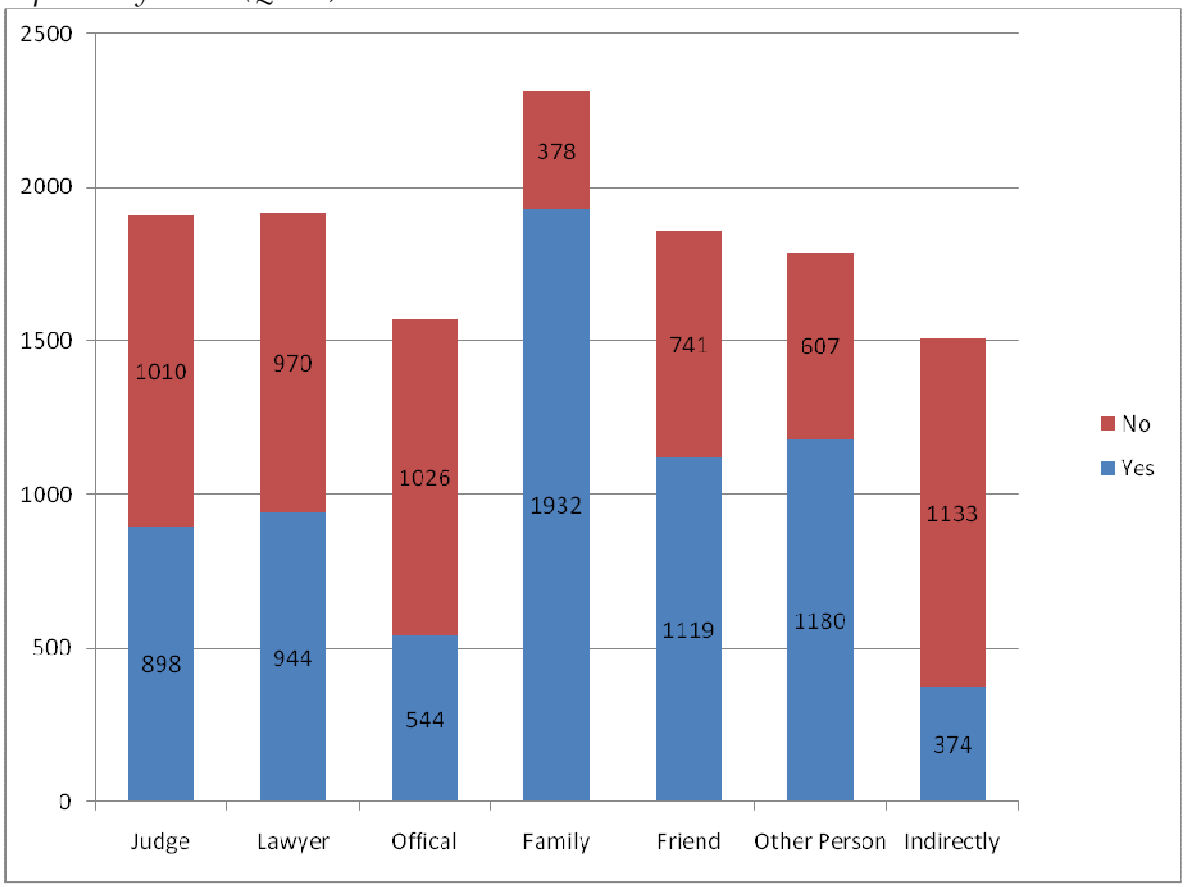

Figure 12: Who would you like to explain the decision to you?

The choices made by children here, in respect of who they would like to explain the decision to them, are clear. By far the most popular answer (almost twice the next most popular category) was family/parent. This was followed by 'a friend', or another person (often described as a relative or supporter). Judge, lawyer and other official (such as a probation officer or youth worker) were all supported evenly. The option that received the least support was receiving the decision indirectly, for example by receiving a letter, with only 374 children choosing this option and a significant number rejecting it expressly. For those that explained their choices, they referred to being able to hear the decision from someone they 'trust and believe', someone 'not biased' and 'who will tell it like it is'. Clarity of expression and hearing it from someone who can talk to children seems important as is the need to receive support during the process. The importance of feeling secure and knowing that person well is clearly important, especially for children who expressed the desire to be able to 'have time to discuss the decision' and to have the 'courage to ask questions'. This question also serves to reinforce the important role played by family in children's lives and the fact that they want information about their rights, and decisions made about them explained to them from those that they trust, rather than those who might have a professional – and as some children might see it, vested - role in this area.

Challenge the decision (Q 4.17):

When asked whether they were given the opportunity to question or challenge the decision, a majority of respondents (39%) replied that they had not. A slightly smaller number (38%)

said that they had, whereas almost a quarter (23% - a significant number in itself) replied that they were unsure.

Change anything about the decision (Q 4.18)

The questionnaire next asked an open-ended question as to whether given the opportunity to go back in time, the child or young person would change anything about the decision made. Many children accepted the decision that had been made about them, saying that they 'wouldn't change anything', 'it's over now' and 'I was happy with the decision that was made'. Others did not appear so happy, however, and commented that 'I could hardly do anything, there wasn't enough time to do anything and or object'. Although given the choice as to whether to comment on either the decision or the way it was made, many of those who made comments focused on the substantive decision. For example, children commented that if they could change anything they would 'behave better', 'treat their parents properly', 'not run away' and so on. Occasionally, children complained about the decision made but felt it had nonetheless been a fair one. But most of all, this section was used by children to articulate their regrets rather than to articulate what part of the process might have been improved. Although this may have been the way the question was phrased, for many children, when asked to reflect, children's regrets were internal, relating to things they might have said or done differently, rather than others' responsibility for the process.

Alternatives to justice (Q 4.19)

The penultimate question gave children the opportunity to consider whether they thought the justice system was the best way to deal with the problems faced by children generally. Although a significant number (27%) had no view, a majority (43%) of those who had an opinion considered that the justice system was not the best option with 30% saying that it was. Children's comments explaining this choice referred to the corruption among the police, the frustration of dealing with adults who do not understand them and cannot empathise or communicate with children, the failure to ensure that children are respected and that justice prevails. They complained 'they can't fully understand how we feel', 'they work too slow while children suffer' and because sometimes it 'complicates the decision even more'. Others expressed positive views, however, saying that it was 'the most effective way', 'because people can be rehabilitated' or saying simply 'the justice system helped me a lot'. As alternatives, children proposed mediation and arbitration, 'giving children a chance', and working it out with children themselves to find a solution. Those who considered that the justice system was the appropriate response considered that they deserved the outcome (i.e. punishment) it produced or who had had positive experiences trying to solve their problems.

4.5 Main messages

The final question listed 12 messages and asked children to identify whether they considered them not important, important or very important. Another category – not at all important - was added on advisement but this did not make its way into all/most questionnaires. Strong support was received for all the key messages either in the form of being ranked as 'important' or 'very important'. Relatively small numbers responded that the messages were 'not important'. The following gives a snapshot of the kind of weighting that children and young people gave to each message:

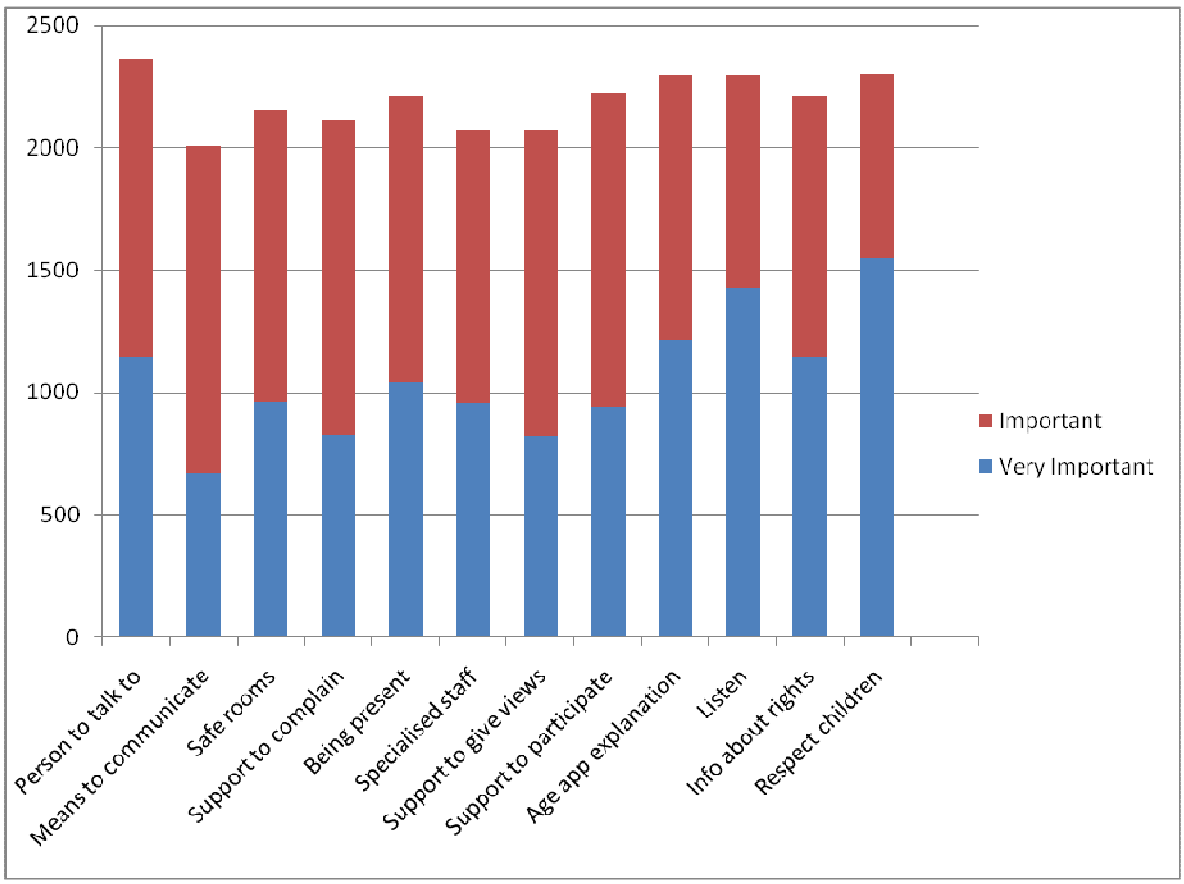

Figure 13: Most Important messages

Arrange for children to have someone to talk to

This was either important or very important by the majority of respondents with a significant number considering it to be important and only a handful considered that this was not important.

Ensuring children can communicate how they want

The dominant view was that this was important, with smaller numbers considering it to be either very important or not important.

Buildings make children feel safe, comfortable

The vast majority considered this to be either very important or important, with a small number rejecting it as not important.

Encourage children to complain or to try to change decisions they disagreed with
Most children considered this to be important although large numbers also thought that it was very important. Small numbers considered that it was not important.

Being present
Equal numbers of children answered that this was either very important or important with a small proportion considering it not important.

Specialised staff
A large majority of children rated this as important, with significant numbers also considering it to be very important.

Have people whose job it is to help children get across their views
A very large majority of children rated this as important, with considerable numbers considering it to be very important. Some thought that it was not important.

Support children to take part in decisions made about them
Similar numbers supported this as either very important or important with tiny numbers rejecting it as not important.

Explain the decisions in a way children can understand
This factor got strong support as most children considering it either very important or important. It is clearly an issue that resonates with children. Only a fraction considered it not important.

Listen to children's views
This achieved a high number of 'very important' ratings and substantial numbers of children also considered it to be important. It is arguably the number one concern for children in the context of child-friendly justice.

Information about rights
As indicated above (in relation to Question 2.2), children consider it very important that they receive information about their rights. Here, equal numbers considered it to be either very important, or important.

Respect for children
Throughout, this has featured as a very dominant issue for children and the way they are treated. Under Question 5, the largest number of children considered that this was 'very important' for them, with a substantial number also ranking it as 'important'. A fraction thought that it was not important.

4.6 Conclusions from the questionnaires
Notwithstanding that lessons need to be learned about how the consultation process was administered and bearing in mind some of the drawbacks that resulted from the use of a questionnaire, there is an undeniable similarity between the findings of the questionnaires and the clear picture drawn earlier by some of the available research and literature in this area. This is very reassuring and reinforces those findings in the broad European context.

From the perspective of this consultation, the following important messages emerge:

- The children consulted had varying experiences in the justice system, but most had encountered the police and been in court;
- In many cases, the children were present and given the opportunity to be heard when a decision was made about them. Many of them had been prepared for the decision that was to be made;
- However, the majority did not feel listened to, and while they understood the decision made about them, they did not have the opportunity to challenge or question it. Nor did they always think it was fair;
- The vast majority of children think it is important that they are heard in decisions that affect them;
- They want to have their say by speaking directly to the decision-maker;
- They want more information about their rights and consider that this could be delivered in a range of ways including via family and through on-line and community based services;
- They have an overwhelming desire for their parents, family and friends to be involved in the process with them – giving them information, accompanying them to hearings etc and explaining decisions to them afterwards;
- The majority would tell an adult and family member if something was wrong. Those who would not tell feel that they can manage on their own or have negative emotions about the consequences of telling someone they do not trust.
- All of the key messages received strong support from children. Of the key messages, those rated most highly by children are the importance of age-appropriate communication, having support to participate and to challenge decisions, having access to information about rights and being respected.

4.7 Findings from focus groups

Children in the criminal process

In addition to the strong messages that emerge from the questionnaires, in-depth interviews with small numbers of children in the penal system also show that the criminal justice system they experienced is not adapted for their age. In particular, those interviewed for this research complained about the failure to fully explain the sentence being passed – the inability to fully understand the sentence passed appeared common – and about the failure of the judges and others responsible to take account of their views. These were particular issues among the young women interviewed by the Children's Rights Alliance for England and the Howard League for Penal Reform, and by the research undertaken by students at the Kurt Bösch University Institute (IUKB) in Switzerland with children in conflict with the law. Both groups interviewed expressed concern about the meaning and consequences of the measures being imposed on them (including transfer to adult court, the justification for imposing specific sanctions) and the uncertainty about their sentence, and what would happen afterwards. Some children interviewed complained about the ineffectiveness of their lawyers and other advocates who they did not consider helpful. They complained about the lack of meaningful contact with their lawyers while they were in detention. The children interviewed for this research also complained that their lawyers failed to prepare them for custody (i.e. suggested they would get bail leaving the young people devastated when they did not), complained about their lawyer being replaced during their proceedings without their lawyer being sufficiently informed about their case and their situation.

They expressed the desire to speak directly to the judge on sentencing – to say 'I was wrong, give me another chance' - but also reflected on how intimidating that would be. Children expressed the desire to be listened to and felt disadvantaged by being given the opportunity to speak only after the judge and the prosecutor have had their say, feeling that this prejudiced matters against them and meant that they had spoken only after some very negative things had been said about them. This reflects that consideration needs to be given to ensuring children have the space and freedom to express themselves and suggests strongly that those factors that inhibit that expression should be addressed. Children also felt embarrassed by being in handcuffs before family, by sitting a long distance from family in the courtroom and felt that this frustrated their own need to be close to their family where they would be able to enjoy their support. Children in detention described this as a 'scary' experience, and complained about the journey into custody – with no long breaks, and no preparation for the admission/strip searching that took place, and staying in police cells. Other children who had experience of migrant detention complained, similarly, that it was not child friendly or organised in such a way as to take their views and circumstances into account. Institutions were seen as 'adult' in nature.

Children with relatives in prison

What is striking about the experiences of children who have relatives in prison is how the justice which takes decisions that affects their lives so significantly is not required in any way to take its impact on children into account. Children are virtually silent from decisions to send their parents to prison, notwithstanding that it arguably has a greater impact on them than decisions regarding divorce, custody and access. In this way, the way in which the criminal justice system treats parents is not child-friendly. The children affected are largely invisible; there are often no supports or services to protect them, give them information or address their problems.

Children who spoke to the Children's Rights Alliance for England, as part of the consultation on child-friendly justice remembered how they had no one to talk to when a relative went into prison for the first time. No one answered their questions like - how long would they be gone, would they get to see them, and, if so, how often? One girl felt the police should be responsible for passing on this information and they all reported that they felt they had no one to talk about it, not wanting to upset their other relatives, usually their mother. Some suggested that they would talk to a counsellor – one girl found this helpful – or to other children who had similar experiences.

As the children described, the experience of visiting prison and the impact of that visit on them was not something that the authorities had considered. For example, children described having to travel long distances to the prison for a short visit, they described the process of being searched at the prison prior to their visit, having their hand stamped 'so hard' as proof that they had been searched, and how they were made to 'feel like they were prisoners as well'. They complained of long waits to visit their relative, at being shouted at when they had fifteen minutes left (for example), and of not being able to bring things to show to or play with their relative during the visit. For children, these are particularly important parts of their relationships with family. Children described the disruption to their lives of having a relative arrested suddenly – one girl described a night raid on her house where a police officer broke down her bedroom door looking for her father – and the anxiety surrounding when they would next see him. Parents also described frustration with the

process of getting approval from social services so that a child can visit. Others expressed uncertainty around having a relative in prison on remand, and highlighted the sudden change to visiting arrangements – going from three visits per week to one for example – when the person is convicted. Children complained (stoically) that they were unhappy not to be given proper information about these things. The importance of this information coming from an independent source was highlighted.

Messages from these children included that children need:

- Someone to explain what is happening when a relative is brought into prison, and to explain how visits will work, how often they can talk on the phone etc;
- Someone to talk to about how they are feeling – a counsellor or other children in similar circumstances;
- To spend more time with their relative during prison visits and to interact with them by playing games etc rather than just talking;
- More age-appropriate play facilities in the prisons, especially to cater for older children and teenagers.

Overall, these children described the importance of taking a child's perspective into account with regard to decisions and processes around the imprisonment of a relative. The message emanating from all focus groups reflects children's needs to be treated as children first.

Children and the police

One of the dominant themes to emerge from both the questionnaires and some of the focus group discussions was children's negative attitudes towards the police. Children in a focus group conducted by the Children's Rights Alliance for England, for example, gave numerous, vivid examples of what they perceived as unfair treatment at the hands of the police. They complained of:

- Being stereotyped (because you wear a hoodie for example) by the police;
- The police's aggressive behaviour, including being shouted at;
- Not being listened to, rather being told by the police officer that they must obey all orders;
- Police impunity and abuse of authority: 'arresting people because they feel like it'; 'they pick on us for no reason' ; 'police often lie and hurt people but they don't get punished the same way (as other people who commit the same crimes)'.

The mistrust of the police is clearly already ingrained in many children, who hold strong, negative views about police legitimacy as a result of their experiences in their communities and in the justice system. This emerged from the number of children who answered 'No' to police officers in Q 3.2 – who would you tell if you were being ill-treated – scoring lower than most other categories. Of those children who have been inside an official building (Q 1.5) or who have met a person working in the legal system (Q 1.6), the majority answered Yes to 'police station' and even more commonly, 'policeman'. Although it is difficult to say definitively, it is likely that those children who have negative views about the justice system base those views on negative encounters or experiences with the police. This is in line with the research in this area, highlighted in Section 2 above. For example, it was apparent from many questionnaires, from many countries, that children have little respect for the police and that their perceptions as to the legitimacy of the justice system are related to their

treatment at the hands of the police. For example, many children complained of 'corruption', that 'the police are bad' and police were not identified as an authority figure deserving of respect. Moreover, it would appear that these views are derived not from the formal interaction with the police, such as during questioning or prosecution, but in their daily, community-based interactions with the police.

Thus, it is important that the Guidelines attempt to capture the powerful role of police officers in communities, and reflect children's recommendations that they should communicate more effectively with children and act more respectfully towards them. The children recommend more training for police officers on how to deal with and talk to children. Accountability – independent police complaints for example – is also important and it should be reflected in the Guidelines that these systems and procedures are made accessible and available to children of all ages and that children do not fear reprisals if they make a complaint.

Migrant and asylum-seeker children

The experience of migrant children – documented principally through two reports submitted by French organisation Thémis – rather than the questionnaires - related to their lack of understanding of the process surrounding immigration decisions made about them. They complained that although they were given certain information – such as being entitled to protection up to 18 years – the uncertainty as to what happened after that weighed heavily on them. They wanted more information about this and instead felt that the rules were so unclear as to make them impossible for them to adequately comprehend. Despite being assured as to their position – and comfortable to be away from the violence previously experienced – they worried that their position was nonetheless insecure and felt uneasy and unsafe, in particular fearing that they would be stopped by the police unaccompanied. They feared racism and abuse from the police. Many children expressed the view that they were treated as foreigners first and children second, and they remembered feeling frightened and confused that as children (especially as children fleeing violence) they could be treated this way, i.e. being questioned by the police, being handcuffed, undergoing bone density testing etc. Those children who benefited from the support of a social worker - including the social worker's presence during the interviews with the children's judge – felt that this independent advocacy was crucial to the protection of their interests and to prevent them from being intimidated. They all wanted more information about legislation and their rights and recommended that this be translated into several languages.

5. CONCLUSIONS

Consultation with children can be complex, but it is a hugely rewarding process. It was both vital and appropriate that the Council of Europe took this step in the context of the child-friendly justice Guidelines. The process has allowed for the views and experiences of almost 4,000 children from across the Council of Europe member states to be heard and to be added into this process. In this regard, it is ground-breaking. This final section summarises the findings and explains how the Guidelines have been enriched by the incorporation of the views and experiences of the children consulted.

Themes of the consultation

In addition to the many detailed observations and conclusions emanating from the consultation with children on child-friendly justice, a number of strong themes run throughout the findings. They can be summarised as follows:

- **Family**: The importance of family in the lives of children was made very clear. Every time children were given a choice as to who they wanted present, who they would confide in, who they wanted information and explanations from, they identified parents, siblings and friends as a priority.
- **Mistrust of authority and need for respect**: By contrast, children mistrust and have little faith in those in authority. They were critical of many officials – police, lawyers and others – for not respecting them, for not appreciating their special needs as children and for not showing them empathy. A huge gap needs to be bridged here.
- **To be listened to**: children want to be heard, they want to receive information in a form that they can understand, and to be supported to participate in decisions made about them. More than anything, they want to speak directly to those who take decisions about them.

How the consultation findings informed the Guidelines

By the time the consultation with children had concluded, the draft Guidelines on child-friendly justice had already addressed many of the concerns raised by the children. However, presentation of the findings of the consultation to the Specialist Group of drafters at their May 2010 meeting led to the Guidelines being informed directly by the views and experiences of children. Moreover, the findings of the consultation provided a clear mandate to those responsible for finalising the Guidelines to strengthen them in several key areas.

In particular, the findings were crucial to ensuring that the Guidelines reflect a form of justice that is genuinely child-friendly, i.e. that respects children and their views, that considers issues from a genuine child's perspective and aims to ensure the fulfilment of the child's rights and interests. In this regard, the findings of the consultation brought to the drafting process a very clear understanding of children's experiences of justice, and their concerns, desires and needs as to how they want to be treated in various aspects of the justice process, including before, during and after proceedings. The consultation also ensured that the drafting process was informed by what justice from a child's perspective and in a child's terms actually means. In this way, the orientation of the Guidelines to a child's point of view is, in one way, the defining contribution of this consultation process and subtle, but important changes of emphasis were made to reflect this in the final version of the Guidelines. In addition, specific and detailed changes to the Guidelines were made as

a direct response to the concerns raised by children during the consultation process and a very genuine effort was made to ensure that the children's views were taken into account in the detail, scope and strength of the Guidelines.

In particular, the views of children have been used to:

- support how and the extent to which the Guidelines recognise the rights of children to be heard, to receive information about their rights, to enjoy independent representation and to participate effectively in decisions made about them. The wording in all relevant sections was strengthened in these respects. For example, the Guidelines require judges to respect the right of all children to be heard in all matters, and require that the means used are adapted to the child's understanding and ability to communicate and take into account the circumstances of the case;
- ensure that adequate provision is made in the Guidelines for children to understand and receive feedback on the weight attached to their views;
- strengthen the provision in the Guidelines for the supports that children enjoy before, during and after contact with the justice system. Particular consideration was given to the role of parents and those trusted by children in this respect (e.g. section on children and the police);
- support provision for an unequivocal right to access independent and effective complaints mechanisms for all parts of the justice system;
- support specialisation among all professionals and require comprehensive and ongoing training for all professionals who come into contact with children in the justice system. These were considered central to addressing the lack of trust in authority expressed by children during the consultation;
- strengthen provision for confidentiality in professionals' dealings with children;
- promote consultation and partnership with children where appropriate on the operation of the justice system to children, and the development and review of law, policy and practice.

Moving forward

In addition to ensuring that the consultation findings inform the content and scope of the Guidelines on child-friendly justice, it is important to ensure that this consultation process is followed up directly with national organisations and with the children who contributed to the Guidelines so directly. In particular, children who participated should receive direct feedback on the impact their views had on the Guidelines and where possible, national organisations should be encouraged to bring the findings of the consultation to relevant authorities with responsibility for justice systems nationally. The child-friendly version of this report should also be disseminated to national organisations and through them to the children who they consulted to ensure they receive feedback on the process. Finally, once the Guidelines have been adopted, efforts should get underway to explore innovative and appropriate ways to involve children in their dissemination and implementation both at national level, and where possible, at Council of Europe level.

At the Council of Europe, it is important to reflect on the lessons to be learned from this, the first initiative of its kind to engage children in standard-setting work. In particular, it is important that the recommendations set out here be given very serious consideration in order to ensure the highest ethical, professional and human rights standards apply to the participation of children in any similar projects.

APPENDIX A - Questionnaires Processed per Country[*]

Country	Number
Azerbaijan	72
Belgium	311
Bosnia Herzegovina	348
Croatia	75
Cyprus	14
Finland	55
France	242
Georgia	28
Hungary	9
Ireland	29
Italy	59
Latvia	47
Lithuania	275
Malta	24
Moldova	174
The Netherlands	4
Poland	77
Romania	5
Russia	179
Serbia	872
Slovakia	27
Spain	81
Sweden	5
Ukraine	241
United Kingdom (Northern Ireland)	7
Website (CRAE)[#]	429
TOTAL	**3721**

[*] This may differ slightly from the number submitted.

[#] This includes questionnaires from a wide range of Council of Europe countries, submitted on-line.

APPENDIX B - Summary of Reports Submitted

Summary of Reports submitted as part of the Consultation Process

- Ombudsman for Children Ireland, *Findings of the Consultation with Children and Young People living in Ireland conducted by the Ombudsman for Children's Office Ireland in February/March 2010 as part of the Council of Europe's Consultation with Children on child-friendly justice*;
- Children's Rights Alliance for England, *Transcript from interview at Rights Respecting Primary School,* London;
- Children's Rights Alliance for England, *Transcripts and Reports of two focus group discussions with children with relatives in prison*;
- Children's Rights Alliance for England, *Notes from a visit to a Prison Visitors' Centre;*
- Children's Rights Alliance for England/Howard League for Penal Reform, *Interviews with four 17 year old females;*
- DCI, Belgium, *Findings of the consultation with young people living in the closed detention centre of Everberg* conducted by Defence for Children International (DCI) in Belgium, March 2010;
- Thémis, *Report on the female foreigner minor discussion group*, 30 March 2010;
- Republic of Serbia Ombudsman, *child-friendly justice. Consultation Process. Report of the Office of the Serbian Ombudsman* (SO);
- France, *Synthesis of replies from fostered young people in daytime activities*, submitted by Josiane Bigot, Presidente de Chambre à la Cour d'Appel de Besancon;
- The Children's Society, *Summarising the Results of the Consultation on the child-friendly justice Guidance with Young People from the Children's Society*, May 2010;
- Report by students of the Master interdisciplinaire en Droits de l'enfant, Institut Universitaire Kurt Bösch (IUKB)-Sion-Switzerland (Céline Morisod and Isabelle Fournier) on Children in Conflict with the Law;
- UNICEF Regional Office for CEE/CIS (2010) *UNICEF Regional Guidance on Consulting with Children in Juvenile Justice Programming*.

APPENDIX C - List of Partner Organisations

LIST OF PARTNERS

- Children's Rights Alliance for England (CRAE)
- Council of Europe Information Office Russia
- Child Rights Information Network (CRIN)
- Defence for Children International (DCI) - Belgium
- ENOC
    - o ENOC – Azerbaijan
    - o ENOC – Belgium
    - o ENOC – Bosnia and Herzegovina
    - o ENOC – Cyprus
    - o ENOC – Croatia
    - o ENOC – France
    - o ENOC – Ireland
    - o ENOC – Lithuania
    - o ENOC – Malta
    - o ENOC – Serbia
    - o ENOC – Slovak Republic

- European Juvenile Justice Observatory (EJJO)
- Interagency Panel on Juvenile Justice (IPJJ)
- Institut Universitaire Kurt Bösch (IUKB)
- International Association of Youth and Family Court Judges (IAYFCJ)
- Kid's Count (United Kingdom)
- The Children's Society (United Kingdom)
- Thémis (France)
- UNICEF
    - o UNICEF Regional Office for CEE/CIS
    - o UNICEF Belgium
    - o UNICEF Georgia
    - o UNICEF Moldova
    - o UNICEF Romania
    - o UNICEF Russia

www.coe.int/
childjustice

APPENDIX D - Questionnaire

THE CHILD FRIENDLY JUSTICE QUESTIONNAIRE

Strasbourg, 17 February 2010 CJ-S-CH (2010) 1E
FINAL
[cdcj/cdcj et comités subordonnés/
documents de travail/cj-s-ch (2010) 1E final]

GROUP OF SPECIALISTS ON CHILD-FRIENDLY JUSTICE

(CJ-S-CH)

QUESTIONNAIRE FOR CHILDREN AND YOUNG PEOPLE ON CHILD-FRIENDLY JUSTICE

GETTING STARTED

You are 17 years old or under,
You have already been in contact with the legal system (for example because your parents have divorced or because you have done something 'wrong'),
You know someone who has been in contact with the legal system, or
You have only seen the law in action on TV,
…..do you want to tell us what you think?

The Council of Europe is listening!

What is the Council of Europe?
The Council of Europe protects the human rights of people who live in 47 different countries in the continent of Europe. 150 million children and young people are affected by its work.

Child-friendly justice
The Council of Europe has written some rules (or guidelines) to protect children's rights in justice. It wants to find out children and young people's views and experiences before finishing and publishing the rules.

The guidelines will cover lots of different decisions about the law and individual children and young people's lives, such as:

- Who you will live with if your parents are separating or getting divorced
- What happens if you are the victim of a crime (including abuse against you)
- What happens if you have been arrested by the police or charged with committing a crime
- How can you make complaints about how you are treated

Click here to see what other kinds of decisions will be covered by the guidelines: SEPARATE WEB PAGE – SEE ANNEX 1.

This survey
The survey will close on **31 March 2010 [midnight]**.

The survey is private: although we are going to put all the answers together and publish them, we will not tell anyone which answers came from you. So no one will be identified.

You do not have to answer every question. Just answer the questions you think apply to you. For some questions, you can choose more than one answer.

If you want to send in your views in another way (such as a drawing, photograph or report) you can do this [cj-s-ch@coe.int by 31 March 2010].

Click here if you want to find out about your human rights before you fill in this survey.

Your turn!

1. ABOUT YOU

1.1 Your age

Under 5
6-10 years
11-15 years
16-17 years

1.2 You are a: Boy Girl

1.3 In which country do you live?

Drop down list all 47 countries
Somewhere else

1.4 Do you consider yourself to be disabled or to have special needs?

Yes
No
I'm not sure

1.5 Have you ever been inside an official building such as:

A police station	yes☐	no ☐	don't know ☐
A court	yes☐	no ☐	don't know ☐
A lawyer's office	yes☐	no ☐	don't know ☐
A prison or detention centre	yes☐	no ☐	don't know ☐
A care home	yes☐	no ☐	don't know ☐

Somewhere else:
……
……
Why were you there?
.....
.....
.....

1.6 Have you ever met a person who works in the legal system?

A policeman	yes ☐	no ☐	don't know ☐
A judge	yes ☐	no ☐	don't know ☐
A lawyer	yes ☐	no ☐	don't know ☐

Someone else: ……..
Why ?.....
.....

2. KNOWING YOUR RIGHTS

2.1 If you said yes to questions 1.5 and/or 1.6, did you understand what was going on?

yes ☐ no ☐ don't know ☐

2.2 Would you like to have been given more information about your rights?

yes ☐ no ☐ don't know ☐

2.3 If so, who would you like to give you this information?

	Yes	No	Don't know
Parents			
Teachers			
Youth workers			
Lawyers			
Other adults [please state]			
Other children and young people [please state]			

2.4 Where else would you like to get information about your rights?

	Yes	No	Don't know
Advice centres			
At local services – like the doctor's clinic, police stations and in council buildings			
In my community			
Information sent to me at home			
Magazines			
Newspapers			
Online (e.g. websites, social networking sites, email)			
Radio			
Telephone helpline			
Television			
Some other way (please explain)			

3 GETTING JUSTICE

3.1 If you were unhappy with how you were being treated - at home, in school or in some other place - would you tell someone?

Yes No Not sure

3.2 If yes, who would you tell?

	Yes, definitely	Yes, probably	No	I'm not sure
Parents or carers				
Brothers or sisters				
Another family member				
Doctor or health worker (e.g. counsellor)				
Friend				
Police officer				
Teacher				
Telephone counsellor				
Social worker				
Lawyer				

Please use this space to tell us about anyone else you would tell (we don't need their name).

3.3 If you would not tell anyone, please tell us why. Because:

	Yes	No	Don't know
I can deal with the problem myself			
I have asked for help before and it didn't turn out well			
I might be punished			
I would be too scared of what might happen to my family			
No one would believe me			
No one would listen to me			
There isn't anyone I can really talk to			
They would tell others without my permission			
Other: [please state]			

4. DECISIONS MADE ABOUT YOU

4.1 Please tick the person or people that made a decision that affected you (for example, deciding where you should live, or what should happen if you break the law). You can tick more than one:

Teacher
Youth worker
Doctor
Housing official
Immigration official
Judge
Lawyer
People running the prison I'm in / was in
Police officer
Psychologist or Counsellor
Social worker
Employer
Someone else (please state)

4.2 What was the decision about? (You can tick more than one).

- Adoption
- Changing my name
- Coming into care
- My treatment in care (e.g. contact with my family)
- How long I have to be in custody
- How long I have to be in an immigration centre
- My application to be a refugee
- My education (including being excluded from school or college)
- My job
- My immigration status
- My health / medical treatment
- My parents splitting up
- Punishment for breaking rules – in school
- Punishment for breaking rules – in custody
- What should happen to someone who committed a crime against me (including child abuse)
- Whether I'd committed a crime / what sentence I should get
- Whether my rights had been ignored
- Who I live with
- How often I see my father/mother
- Something else
- I don't know

4.3 How important was the decision for you?

Not important Important Very important

4.4 Were you there when the decision was made?

Yes, No, I cannot remember

4.5 Beforehand, did anyone explain to you what was going to happen?

Yes, No, I cannot remember

4.6 Were you asked for your views?

Yes, No, I cannot remember

4.7 Were these views taken seriously?

Yes, No, I don't know

4.8 Did you feel that you were treated fairly?

Yes No I don't know

4.9 Do you think it is important that the person making the decision hears your views?

Yes No I don't know

4.10 If so, how would you like to be heard in decisions made about you by others?

- By speaking directly to the person making the decision
  yes ☐ no ☐ don't know ☐
- By having your parents speak for you
  yes ☐ no ☐ don't know ☐
- By having your lawyer speak for you
  yes ☐ no ☐ don't know ☐
- By having the help of another person of your choice
  yes ☐ no ☐ don't know ☐

In another
way:……...

4.10 Was anyone there to support you and to make sure you understood what was going on (for example, a lawyer or parent)?

Yes, No, I'm not sure

4.12 Did you feel that the setting (building, office, etc) you were in was safe and suitable for children?

Yes, No, I'm not sure

4.13 What helped you or would have helped you feel safe?

By having a person of your choice with you yes ☐ no ☐ don't know ☐

By not having to give your name yes ☐ no ☐ don't know ☐

Nothing would help yes ☐ no ☐ don't know ☐

Something else:……

4.14 Did you understand the decision made about you?

Yes, No, I'm not sure

4.15 Was it explained to you?

Yes No I'm not sure

4.16 Who would you like to explain the decision to you?

- The judge yes ☐ no ☐ don't know ☐
- The lawyer yes ☐ no ☐ don't know ☐
- Someone official yes ☐ no ☐ don't know ☐
- Your family/parent yes ☐ no ☐ don't know ☐
- A friend yes ☐ no ☐ don't know ☐
- A person of your choice yes ☐ no ☐ don't know ☐
- Indirectly (e.g. by receiving a letter) yes ☐ no ☐ don't know ☐

- In another way :……..……...
- Why?.....
  ..... ……..

4.17 Were you given the opportunity to question or challenge the decision?

Yes, No, I'm not sure

4.18 If you could go back in time, would you change anything about how the decision was made, and / or the decision itself? Please explain below.

4.19 Do you think that the justice system (e.g. courts, police etc) is the best way to solve some of the problems faced by children and young people?

yes ☐ no ☐ don't know ☐

- Why?.....
  .....
  .....
  .....

- If not, what other solution could be found?
  .....
  .....
  .....

5. COUNCIL OF EUROPE GUIDELINES – MAIN MESSAGES

The new guidelines are trying to make sure children's rights are better respected in decisions made about them. We think the following things are important. Do you agree?

Tell us whether you think they are **not at all important, not important**, **important** or **very important** to you.

Whenever legal decisions are being made about children and young people, the guidelines should make sure that adults:

- Arrange for children to have someone to talk to and to give them support

not at all important, not important, important, very important

- Ensure children can communicate their views how they want, for example through making a video or through artwork or writing their own report

not at all important, not important, important, very important

- Arrange buildings and rooms so that children feel safe, welcome and comfortable

not at all important, not important, important, very important

- Encourage children to complain or to try to change decisions they disagree with

not at all important, not important, important, very important

- Give children the option of being present when a decision is being made

not at all important, not important, important, very important

- Have lawyers, judges and others that know how to talk to and listen to children

not at all important, not important, important, very important

- Have people whose job it is to help children get across their views

not at all important, not important, important, very important

- Support children to take part in decisions made about them

not at all important, not important, important, very important

- Explain the decisions to children in a way they can understand

not at all important, not important, important, very important

- Listen to children's views

not at all important, not important, important, very important

- Tell children about the law and their rights

not at all important, not important, important, very important

- Treat children with respect

not at all important, not important, important, very important

Please use this space to tell us anything else about making sure children are treated properly when people outside their family are making decisions about them.

Thank you!

If you want to know more about your rights, click here
[link to the brochure I have rights, you have rights, he/she has rights ….]

If you want to know more about what the Council of Europe is doing for you and with you, you can also visit the site « Building Europe for and with children »: **www.coe.int/children**

If you want to know how your answers are taken into account, come and visit this website again as of June 2010

See you soon!

ANNEX 1: Child-friendly justice guidelines

These are some of the decisions that affect children and young people and that might be covered by the Council of Europe's child-friendly justice guidelines.

People who make decisions affecting children	Examples of decisions affecting children
Criminal courts	• You are the victim of a crime and the court is making decisions about the person or people who committed the crime against you • You have been charged with committing a criminal offence • You are a witnesses to a crime • You have suffered abuse or harm
Family courts	• Your parents have separated and a family court is deciding who you should live with and what (if any) contact you should have with the other parent • A court is deciding whether your parents can look after you, or if you should go into care (live with foster parents or in a children's home for example) • You are being adopted
Doctors	• Your parents or a doctor think you need medical treatment; or they disagree with you having treatment • You have mental health difficulties and a doctor and / or your parents thinks you should be in hospital
Employers	• Your employer wants to change your job (e.g. how much you get paid or how many hours you work) • You have been accused of doing something wrong at work, and your employer plans to sack you
Housing officials	• You want to have your own tenancy • The person or company that owns your home plans to force you to leave
Immigration	• You want to apply to live or study in a different country from where you were born • You are being forced to leave the country where you were born • You are being forced to return to the country where you were born
Police	• You are the victim of a crime • The police say you have committed a crime

Prison officers	• You are in custody • You are accused of breaking a rule in custody • Decisions are being made about when you can leave custody
Social workers	• Decisions are being made about where and with whom you should live
Teachers	• You want to go to a particular school or college • You are accused of breaking school or college rules • You are excluded or expelled from a particular school or college • You can only study at a particular school or college if you follow certain rules