Standing Committee for Youth Justice

Ms Harriet Harman
Chair
Joint Committee on Human Rights
Houses of Parliament
London
SW1A 0AA

30 September 2016

Dear Ms Harman

Joint Committee on Human Rights – UK's record on children's rights inquiry

The Standing Committee for Youth Justice (SCYJ) is an alliance of over forty organisations campaigning for improvements to the youth justice system in England and Wales. Please accept this letter as our submission to your inquiry into the UK's record on children's rights.

In June this year, the UN Committee on the Rights of the Child published its report into the UK's compliance with the UN Convention on the Rights of the Child (UNCRC). The report highlighted a number of important issues with the regards to children's rights in the justice system, such as the age of criminal responsibility in England and Wales, the over-use of detention and the over-representation of children from ethnic minority backgrounds. These are undoubtedly important, however, in this submission, we will focus on pressing issues that were not commented on by the UN Committee, particularly, children's right to privacy in the justice system in England and Wales.

Article 16 of the UNCRC provides a general right to privacy, Article 40 2)b)vii) provides for a right to privacy in all stages of criminal proceedings. Rule 8 of the Beijing Rules clarifies that privacy is important to prevent harm to the child by the process of labelling, and specifies that, "In principle, no information that may lead to the identification of a juvenile offender shall be published". The process of labelling, and other harm caused by identifying a child in trouble with the law, has implications for provisions in Article 40 of the UNCRC, namely treating children in trouble in a manner consistent with promoting their reintegration and assuming a constructive role in society.

In its 2008 report on the UK, the UN Committee on the Rights of the Child found that, "the State party has not taken sufficient measures to protect children, notably those subject to ASBOs, from negative media representation and public 'naming and shaming'" (paragraph 36). However, the UN Committee's 2016 report on the UK did not comment on this matter, despite the situation having deteriorated since its 2008 report.

Since 2008, children's right to privacy in the justice system has not improved and, in significant areas, it has been seriously eroded. In particular:

- The Anti-social Behaviour, Crime and Policing Act 2014 replaced Anti-social Behaviour Orders (ASBOs) with injunctions and Criminal Behaviour Orders. However, as with ASBOs, the default position is that these orders can be publicised,

as can breach proceedings. The opportunity to make anti-social behaviour policy more child rights complaint was not taken.

- There is no legal mechanism to prevent children being named pre-charge. This has long been the case, however, over the past few years it has become increasingly problematic. It would appear that the press has recently become aware that they are not prohibited from identifying children pre-charge, or at least they have become emboldened, and the rise of social media is creating further problems. Recently, a number of children in high-profile cases have been named pre-charge. For instance, the child convicted of the murder of Leeds schoolteacher, Ann Maguire, was named by The Sun and on social media before he had been charged, with the former carrying a photograph of him. Similarly, the child later convicted of stabbing his teacher, Vincent Uzomah, in Bradford was named and pictured in national media pre-charge, and identified on social media. The child accused of involvement in the TalkTalk hacking was identified by national media, despite never having been charged, and the boy later convicted of killing his fellow pupil, Bailey Gwynne, at a school in Aberdeen, was identified pre-charge in national media.

  In 2014, the Government said it did not wish to legislate to prohibit the media naming children pre-charge, but wanted the new system of press regulation to deal with the matter. However, the new system of press regulation is not dealing with it, as evidenced by the children above being named by national media, seemingly with no repercussions. The Editor's Code – against which the new regulator, IPSO, regulates the press – does not prohibit naming children pre-charge. This is despite the fact that SCYJ requested the necessary amendments to the Code while it was being revised. SCYJ believes legislation is urgently needed to prevent children being named pre-charge and so to ensure their right to privacy is met.

- Since 1933, s.39 orders (orders made under s.39 of the Children and Young Persons Act 1933) have been used to grant anonymity to any child involved in criminal proceedings outside the youth court in England and Wales, at a judge's discretion. No test need be satisfied for a s. 39 order to be imposed. There has been legal uncertainty about whether or not the orders expired after a child turned 18. However, in practice, they seemed to be respected by the media after that time. Following the 2014 case of JC & RT (JC & RT v The Central Criminal Court [2014] EWHC 1041 (QB)), the Government passed amendments to the Criminal Justice and Courts Act 2015 which prevented s.39 orders applying to criminal courts and created two new reporting restrictions orders to replace them, both of which have significant child rights implications:

    - S.45 of the Youth Justice and Criminal Evidence Act 1999 is brought into force. This gives the court the power to impose reporting restrictions on a case to prevent the children involved being identified. These restrictions will expire when a child reaches 18.
    - S.78 of the Criminal Justice and Courts Act creates a new order (under s.45A of the Youth Justice and Criminal Evidence Act 1999) which allows a court to provide child victims and witnesses with lifelong anonymity, providing they meet a relatively high threshold test (that the quality of child's evidence or their cooperation will be damaged otherwise).

  As a result of these changes it is now more difficult for child victims and witnesses to be provided with lifelong anonymity; the 2015 Act has introduced a test which must be satisfied for this to be granted, where previously there was none. The changes also mean that there is no means for a criminal court to provide a child defendant

with anonymity post-18 (even if they are acquitted). The only way for them to be grated anonymity post-18 would be for them to seek a civil injunction – a lengthy and costly process for which legal aid is would not be available. This represents a significant regression in the child's right to privacy and the youth justice system's capacity to promote reintegration.

Finally, SCYJ is concerned that the criminal records system in England and Wales is incompatible with the UNCRC. Article 40(1) of the UNCRC requires juvenile justice systems to promote the reintegration of children. However, the criminal records system in England and Wales works against reintegration by tying children to their past; cautions and convictions obtained as a child must frequently be disclosed, and sometimes even minor offences must be disclosed for life, this works against reintegration and inhibits access to education, employment and housing. England and Wales make almost no distinction between criminal records acquired as a child and those acquired as an adult. This is unusual – SCYJ's report, Growing Up, Moving On (2016), which examined criminal records systems in sixteen comparable jurisdictions, found that the system in England and Wales was the most punitive.

I hope that you consider these points as part of your inquiry into the UK's record on children's rights.

Yours sincerely

Ali Wigzell
Chair
The Standing Committee for Youth Justice