

Review of arrangements to deliver justice in serious sexual offence cases

7 September 2018

“Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known they cannot be kept waiting any longer for the protection to which they have an unqualified right.” (2006 UN Study on Violence against Children)

Key recommendation

In reviewing arrangements to deliver justice in sexual offences against children cases the Commissioner recommends that the Review carefully evaluates the merits of child centred justice models, such as Barnahus, which seek to improve outcomes for both children and the criminal justice system.

Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Commissioner’s remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or is care experienced. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY has warmly welcomed opportunities to engage with the Review of arrangements to deliver justice in serious sexual offences cases and this submission reflects many of the themes discussed in our 1 June 2018 meeting with Sir John Gillen.

Children's Rights

The United Nations Convention on the Rights of the Child sets out minimum standards for children's rights across all areas of their lives such as, civil and personal protection, health, education, welfare. The four guiding principles which flow through the Convention are: children's right to non-discrimination; right to survival and development to the highest level; to their best interests being a primary consideration; and to their voice being heard in all matters affecting them.

The Convention also highlights that as rights-holders children have special rights to protection from abuse, exploitation and trafficking and to be supported in their recovery from abuse. The State has an obligation to ensure that appropriate measures and procedures, including court and judicial processes, are in place to realise these rights. The Convention affords particular rights to any child in contact with the criminal justice system, including child defendants. The rights of the Convention are interdependent and indivisible – like children's lives they cannot be compartmentalised.

In 2016, following examination of the UK and devolved governments, the UN Committee on the Rights of the Child stated that in Northern Ireland the recommendations of the 2014 Independent Inquiry into Child Sexual Exploitation (CSE) must be implemented and that across the UK the capacity of law enforcement bodies and the judiciary to detect and prosecute sexual abuse and exploitation cases and to grant effective remedies to victims should be strengthened. The Committee also recommended that video recorded interviews with child victims and witnesses be used in court as evidence rather than children attending in person and being subject to cross-examination.¹ **The Commissioner would welcome the Review giving full consideration to how the recommendations of the Committee on the Rights of the Child can be addressed within the scope of its work.**

Data regarding sexual abuse and offences against children

NICCY notes that in considering its work, the Review should remain mindful of the under-reporting of sexual and other offences against children. In examining the prevalence of child abuse in the UK, the NPSCC has estimated that for every child on a child protection

¹ Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. See paras 45 and 81:
<https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx>

plan or register another eight were experiencing maltreatment or abuse² and in assessing the extent of sexual abuse against children within family settings the English Children's Commissioner found that only 1 in 8 children who are sexually abused were identified by professionals.³ It is therefore important to recognise that the number of cases which are known to statutory agencies are likely to represent only a partial picture of child sexual abuse cases and that a range of factors can act as barriers to identification and reporting, including the power relationship endemic to abuse, the emotional impact of abuse which can induce fear, shame and guilt on the part of the victim and the nature of our child protection and justice systems which largely rely on the capacity and ability of a child or young person to disclose that they have been abused.

In considering published data, we note that the latest PSNI statistics for 2017/18 state that 3,450 sexual offences were reported and that 1,912 of these were against children under 18.⁴ Given that the majority of reported sexual offences continue to be committed against children (55%), it is vital that the Review gives due weight to the needs of child victims and witnesses within its work and we welcome the intention to ensure that children are visible in the work of the Review.⁵ In examining the progress of reported sexual offence cases through each stage of the criminal justice system we ask that the Review pays attention to the attrition rate of reported offences against children. In earlier research, NSPCC found that only 19% of reported sexual offences against children had been detected or 'cleared up'⁶ and we note that PSNI figures show that only 5.5% of all reported rape cases (where the victim was either a child or adult) in the year up to 31 March 2018 resulted in a charge

² Bentley, H. et al (2017) How safe are our children? The most comprehensive overview of child protection in the UK 2017. London: NSPCC.

³ OCCE (2015) Protecting children from harm: A critical assessment of child sexual abuse in the family network in England and priorities for action. London: OCCE.

⁴ PSNI (2018) Police Recorded Crime in Northern Ireland, update to 31 July 2018, PSNI Statistics. Available at:

<https://www.psni.police.uk/inside-psni/Statistics/police-recorded-crime-statistics/>

⁵ In discussions with Sir John Gillen consideration of Child Protection Register data in understanding prevalence of sexual offences against children was raised but we note that the Department of Health's Children's Social Care Statistics 2016/17 show that at 31 March 2017 while 2,132 children were placed on the Register, sexual abuse the least likely category of abuse for registration (7% (140 children) registered due to sexual abuse only, 2% (36) due to sexual abuse and neglect and 1% (21) due to sexual and physical abuse and neglect). Available at:

<https://www.health-ni.gov.uk/publications/childrens-social-care-statistics-northern-ireland-201617>

⁶ Bunting L. (2011) Child Victims in contact with the criminal justice system in NI. Belfast: NSPCC.

or summons.⁷

In addition to developing a better understanding of under-reporting and the attrition of reported offences, the justice system in Northern Ireland should seek to better understand the experiences of children and young people and the extent of their confidence in the system to support and protect them and to deliver justice. This should draw on the work of the NSPCC's Young Witness Service. **NICCY recommends that the Review seeks to understand the causes of the under-reporting of sexual offences against children and the attrition rate of reported cases.**

Child Sexual Exploitation (CSE)

The Independent Inquiry into Child Sexual Exploitation (CSE) in Northern Ireland was initiated by the Ministers for Health, Justice and Education in 2013 and published its report in November 2014.⁸ Ministers made a commitment to develop action plans in order to implement the Inquiry recommendations, which included a number of recommendations specific to strengthening criminal justice arrangements, and Departments produced progress reports following this. NICCY has closely monitored the implementation process and continues to have significant concerns about the lack evidence to demonstrate that implementation has been effective and is improving outcomes for children. These concerns and the Commissioner's recommendations have been set out in a number of NICCY papers.⁹

The Commissioner asks that the Review gives particular attention to the relevant recommendations of the Independent inquiry into CSE and considers how these can be properly progressed in order to ensure better outcomes are secured for victims of all sexual offences against children and for justice more widely. NICCY notes that many of

⁷ PSNI (2018) Police Recorded Crime in Northern Ireland: Monthly update 31 March 2018 providing figures for 1 April 2017 – 31 March 2018, PSNI Statistics. Available at: <https://www.psnipolice.uk/inside-psni/Statistics/police-recorded-crime-statistics/>

⁸ The Inquiry was established following the police investigation Operation Owl into cases of CSE involving twenty two 'looked after' children. At the same time the Health Minister directed the Safeguarding Board for Northern Ireland to undertake a thematic review into these cases which was published in December 2015.

⁹ NICCY's reviews of Departmental Action Plans and First and Second Progress Reports are available here: <https://www.niccy.org/about-us/our-current-work/high-level-corporate-objectives/children-s-right-to-health-protection-from-violence-or-abuse/child-sexual-exploitation-cse/>

the Inquiry recommendations have direct relevance to the Review's terms of reference. These recommendations include:

Key recommendation 9: The Department of Justice must establish an inter-agency forum drawn across the criminal justice sector and third sector stakeholders to examine how changes to the criminal justice system can achieve more successful prosecutions of perpetrators of CSE. This must be informed by the experiences and needs of child victims.

Key Recommendation 14:

The DOJ should lead on a project to examine legislative issues highlighted in this report and bring forward proposals for change. These include:

- a) Ensuring compliance with international standards by extending protection to children up to the age of 18, specifically, the Child Abduction (Northern Ireland) Order 1985 and the Sexual Offences (Northern Ireland) Order 2008.*
- b) Providing for a Recovery Order under the Child Abduction (Northern Ireland) Order 1985, on the model of that in section 69 of the Children (Northern Ireland) Order 1995.*
- c) Replacing all references to child "prostitution" with "child sexual exploitation".*
- d) Extending the offence of "grooming" to include "enticing".*
- e) Reversing the rebuttable presumption in the Sexual Offences (Northern Ireland) Order 2008 in relation to "reasonable belief" as regards the age of a child.*
- f) Whether recent legislation in England and Wales relating to hotels, guest houses and bed and breakfast accommodation would be helpful in addressing CSE in Northern Ireland. These are contained in the Anti-Social Behaviour, Crime and Policing Act 2014.*

Supporting Recommendation 43: PSNI and criminal justice partners in the Prosecution Service and Court Service should continue to develop their approach to responding to victims of CSE in a way that treats them fairly and sensitively and avoids blaming them for offending behaviour associated with their abuse. This involves attitude, not just policy or process.

Supporting Recommendation 44: The Department of Justice should continue to seek to develop and improve the experiences of young witnesses, taking into account research and learning from other countries. This should include consultation with stakeholder groups and with young witnesses.

Supporting Recommendation 45: The Public Prosecution Service should ensure that prosecutors dealing with sexual offences against children continue to receive training at regular intervals on the dynamics of child abuse, including CSE.

Supporting Recommendation 46: Awareness-raising about the dynamics of child abuse and CSE in particular should be available for all legal personnel and should be mandatory for all legal professionals dealing with child abuse cases. This should be made the responsibility of the PPS for its own legal staff, the Northern Ireland Bar for its staff and the Judicial Studies Board for Judges.

Supporting Recommendation 47: While we acknowledge the work already undertaken by the Department of Justice in order to avoid delay, robust case management is necessary. The Department should ensure that both statutory case management and statutory time limits are introduced in Northern Ireland. Both have already been the subject of clear recommendations by the Criminal Justice Inspection in Northern Ireland.

NICCY would welcome the Review seeking to ensure that the recommendations from the Independent Inquiry into CSE are properly progressed in order to more effectively protect child victims and witnesses and to better disrupt, investigate and prosecute perpetrators of sexual offences against children. This submission will reference relevant Inquiry recommendations throughout.

Disclosure, use of evidence and trial process

We would welcome the Review carefully considering the learning from child protection and justice processes which do not seek to replicate an adversarial procedure for cases concerning sexual offences against children while ensuring that the interests of justice are properly served. **While current processes may be further developed to, for example, improve Achieving Best Evidence and use of video recorded interviews and to properly implement special measures¹⁰, we note that this will not fully address fundamental concerns about avoiding the re-traumatisation of victims and improving the fairness and the quality of justice for all involved.**

¹⁰ NICCY notes that the Judicial College for England and Wales has recently updated the Equal Treatment Bench Book which provides guidance on the use of measures currently available to support child victims and witnesses to give evidence. Judicial College (2018) Equal Treatment Bench Book 2018. Available at: <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

The Review provides an important and timely opportunity to thoroughly reflect on the weakness in current arrangements and consider how we can put in place a child centred approach which secures child victims' and witnesses' best evidence, minimises the need for multiple interviews and examinations, and respects due process. NICCY draws particular attention to the development and adaption of the Barnahus or Child House and which is promoted by the Council of Europe. The model developed in Iceland and is now operating in a number of countries, including a small pool of Home Office funded pilot projects which have been established in England. The Scottish Courts and Tribunal Service have also recommended that the model be developed in Scotland.¹¹

The Barnahus model seeks to embed the justice process within child protection disclosure procedures and by ensuring legal, social care and medical professionals work collectively aims to provide a comprehensive service for children in a single setting.¹² The model involves professionals trained in forensic interviewing and, following an exploratory interview and any alleged perpetrator being taken into custody, an investigative interview is undertaken with a range of professionals including defence advocates, police, child protection services, the child's legal representative and a judge observing via video link and communicating with the interviewer to ask any questions. The interview provides the child's testimony in court and the process aims to ensure minimal time lapse between exploratory and investigative interviews and between investigative interview and trial. The model also allows children to access therapeutic support more quickly.

In Iceland, a significant increase in investigation and prosecution rates for sexual offences has been attributed to implementation of the model:

"From the onset of Barnahus twice as many cases of suspected sexual abuse have been investigated, the number of cases prosecuted has tripled and the same applies to the number of sentences passed on a yearly basis. This I believe is largely due to the fact that the evidential quality of children's disclosure has significantly improved."

Bragi Guobrandsson, former General Director, The Government Agency for Child

¹¹ Scottish Court and Tribunal Service (2017) Evidence and Procedure Review: Children and Vulnerable Witness project. Available at:

<https://www.scotcourts.gov.uk/about-the-scottish-court-service/reports-data>

¹² Further information available from Barnaverndarstofa, the Government Agency for Child protection in Iceland:

<http://www.bvs.is/english>

Protection, Iceland.¹³

We note that the development of a similar model in this jurisdiction would need to take account of a range of factors, including the requirement that evidential and public interest tests are met to inform prosecutorial and charging decisions and that this may necessitate a further interview stage with the child, as occurs in some other countries which have adapted the model. We would highlight that European Barnahus Quality Standards have now been developed and should support the Review's further exploration of the usefulness of this model.¹⁴ Such a substantive change to current adversarial arrangements will both address a number of recommendations of the Independent Inquiry into CSE (such as key recommendation 9 and supporting recommendations 43 and 44) and also a range of areas set out in the Review's terms of reference, including, the disclosure of evidence, support for complainants, victims and witnesses and use of cross-examination. **The Commissioner recommends that the Review carefully evaluates the merits of child centred models, such as Barnahus, which seek to improve outcomes for both children and the criminal justice system.** We also note the value of the Review considering non-adversarial arrangements for all sexual offences cases not only those involving children.

In considering other reforms and improvements, NICCY would welcome the Review addressing the following issues:

Court processes

- **Training and expert input:** it is NICCY's view that **all legal and judicial staff should receive regular expert training on children's rights as well as sexual offences**, including child sexual abuse and Child Sexual Exploitation. In addition to this, **expert input for all legal personnel and jury members should be provided at the beginning of each trial** to address key issues such as the power dynamics of sexual abuse and grooming and to include 'myth busting'. These matters are addressed in recommendations 45 and 46 of the Independent Inquiry.

¹³ Cited in Children's Commissioner for England (2016) Barnahus: Improving the response to child sexual abuse in England. Available at: <https://www.childrenscommissioner.gov.uk/publication/barnahus-improving-the-response-to-child-sexual-abuse-in-england/>

¹⁴ Haldorsson O. L. (2017) European Barnahus Quality Standards – Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence. PROMISE: Councils of the Baltic Sea States Secretariat and Child Circle.

- Support for victims and complainants: **child victims and complainants should have access to a legal representative or advocate** whose role is to protect the rights and best interests of the child and who has an authoritative position in proceedings. Children and young people should be provided with effective support both pre and post-trial. In addition to this, we note that consideration should be given to the information and support provided to dependent children of complainants and witnesses and that judicial arrangements should be sensitive to the caring responsibilities victims and witnesses may have.
- Case management: **statutory case management and statutory time limits should be in operation for all cases concerning sexual offences against children.** This is in line with supporting recommendation 47 of the Independent Inquiry.
- Anonymity: protecting the anonymity of victims and preventing jigsaw identification is vital and NICCY highlights that, following recent developments in a high profile case, measures to further ensure anonymity should be considered. We note that the Review may also explore defendant anonymity and that this may, in turn, strengthen complainant anonymity. This should be carefully considered, drawing on the experience of the Republic of Ireland as well as current reviews in England and Wales and should take into account any evidence where naming defendants has led to additional victims and witnesses coming forward and more robust convictions being secured as a consequence. Any final assessment should balance such considerations with protecting the rights and best interests of all children involved in proceedings (whether as victims, witnesses or defendants) in having their anonymity protected.
- Court attendance and reporting: the Review should examine the value of restricting public attendance and media reporting in such cases. Following a recent high profile case, we note the urgency with which this matter should be considered, including through engagement with established media organisations as well as addressing the role and impact of social media in reporting. We draw the Review's attention to NICCY's advice on protecting children's best interests in judicial proceedings as set out in our submission to the Civil and Family Justice Review and also to published Guidance for media reporting on child abuse and neglect which have both been enclosed with this submission.

Legislative reform

The Independent Inquiry into CSE set out a number of clear recommendations to strengthen legislative protection for children and young people (key recommendation 14) and NICCY has been disappointed by the Department's lack of progress in bringing forward proposals to address these. We also note that the Inquiry's recommendations reflect observations of the UN Committee on the Rights of the Child who have stated that Northern Ireland must improve legal safeguards by ensuring the Sexual Offences (Northern Ireland) Order 2008 includes all offences and that all children up to the age of 18 are afforded protection.¹⁵ **The Commissioner would welcome the Review taking account of the importance of legislative reform** in order to better protect children and young people and to ensure justice is more effectively delivered in sexual offences cases against children.

Outcomes for children and young people

NICCY would welcome the Review seeking to ensure that any reforms to current arrangements to deliver justice in serious sexual offences cases are accompanied by a clear framework for implementation which will provide evidence of how all agencies in Northern Ireland are more effectively responding to sexual offences against children.

Conclusion

NICCY has given a range of advice throughout this submission but would highlight that the Commissioner's key recommendation is that in reviewing arrangements to deliver justice in sexual offences against children cases, **the Review carefully assesses the merits of child centred justice models such as Barnahus, which seek to elicit fundamental reform that improve outcomes for both children and the criminal justice system.**

¹⁵ Committee on the Rights of the Child (2014) Concluding observations on the UK report on the Optional Protocol on the Rights of the Child on the sale of children, child prostitution and child pornography.