

Barnardo's Scotland's Response to the Carloway Review

Barnardo's Scotland welcomes the Carloway review and is grateful for the opportunity to respond to the consultation.

Barnardo's Scotland currently works with 28 of Scotland's 32 local authorities, not only providing social care services for children, but also with a growing role in providing services in health, justice and employment. We currently run over 70 specialised projects in local communities across Scotland, and last year we worked with over 10,000 children, young people and their families.

Barnardo's Scotland currently provides a number of youth justice services throughout Scotland and we work with a range of young people who offend and those that come into contact with the judicial system.

We believe that there are a number of issues with regards to the detention and questioning of child suspects that need to be addressed. We welcome this review as an important step towards meaningful change that will help safeguard the rights of child suspects and ensure that they receive the advice and support they need during an extremely difficult time.

Barnardo's Scotland would like to add that we enjoy a good working relationship with police forces throughout the country, and have found police officers and managers across Scotland to be helpful and committed to supporting young people that come into contact with the criminal justice system.

Within this response we frequently refer to the Council of Europe's (CoE) Guidelines on Child-Family Justice, which we believe to be a useful document for guiding Government's on dealing with children going through the justice system. For ease of reference, this document is available [here](#). These guidelines were adopted by the Council in November 2010.

Our response to this consultation refers to the section on child suspects and responds to questions 10-12 of the consultation document as well as a number of additional issues we feel are important. We have broken down our response by subject headings.

We accept that some of the observations and recommendations made in this response may fall out of the remit of this consultation, but we would hope that the Review would recognise these issues as important and recommend that they be considered by the Scottish Government in its ongoing deliberations and development of policy and legislation in this area.

1. Length of time

We believe that the entire process from detention of a child suspect to charge and then ultimately to a court appearance takes too long. For example, a young person in contact with one of our services was charged aged 15 years and 4 months, but it took another 21 months before the case was eventually dropped. This case is not exceptional. Our services have come into contact with a number of young people who have been subjected to, what we would deem, an extremely lengthened criminal processes.

There are examples of local pilot schemes, such as the Youth Justice Pilot in Aberdeen City Council, which is part of the city's Youth Justice Strategy, where attempts have been made to reduce the amount of time that children and young people spend in criminal proceedings. The programme aims to lead and coordinate the prevention and reduction of offending by children and young people in Aberdeen and, in doing so, both improve community safety and ensure better outcomes for children and young people engaged in offending behaviour.

It is a multi-agency project and the partners include Aberdeen City Council, Scottish Prison Service, Grampian Police, Procurator Fiscal, Children's Reporter, Children's panel, NHS Grampian, Aberdeen Foyer, Barnardo's, SACRO, Victim Support Scotland and Apex

With regards to dealing with child suspects the programme has developed an early intervention system, which aims to ensure that those under 18 are dealt with as quickly as possible, using systems such as pre-referral screening to identify and prioritise new cases of young people. Current analysis has seen the average time for those aged 16-17 been dealt with from first calling to disposal fall from 104 days to 67 days on average.

The CoE Guidelines on Child-Family Justice states that, "In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law." (Paragraph 50)

Barnardo's Scotland would agree with this principle and would like to see the process kept to an absolute minimum and would urge other local authority areas to follow the lead of Aberdeen City Council. We would also urge that the Scottish Government consider issuing guidelines and good practice examples to all councils and police boards to ensure that child suspects are dealt with speedily.

2. Legal advice and children and young people

The CoE Guidelines on Child-Family Justice states that information and advice should be given to the child in a way that he or she can understand.

Ensuring children and young people have legal advice that is explained to them in a way that is easily understood so that they can make informed decisions is extremely important. Legal aid is often complicated and complex, which can make it difficult for children and young people to take full advantage of the advice they are being given.

To support this we believe that training should be developed for lawyers who work with and support children. A register for lawyers with such training should be established and legal aid provided to children and young people should come from people on this register. The CoE guidelines suggest that people who work with children should receive training on the needs of children of different ages and that they should be trained to talk to children in a way that children understand. It also states that lawyers who work for children should know about children's rights and how to speak to children.

A useful reference point for this may be the Scottish Government's new Common Core of Skills, Knowledge Understanding and Values for the Children's Workforce in Scotland, which is currently out for consultation, in particular the sections on appropriate and effective communication and effective partnership and multi-agency working. The common core framework stresses the need for all who work with children and young people, including those working in the criminal justice system, to be able to utilise the appropriate method of communicating depending on the situation and needs of the child, young person or family and be able to work effectively with a range of different workers within own organisation and in others.

3. Consultation Questions

With regards to the specific questions of direct concern to Barnardo's in the review we have set out responses below.

- *Question 10: What age should define the child suspect? Should any distinction be drawn between older children and younger children?*

Article One of the United Nations Convention on the Rights of the Child (UNCRC) stipulates that children should be defined as those under the age of 18. The CoE Guidelines on Child-Family Justice defines a child as anyone under the age of 18.

Barnardo's Scotland believes that anyone under the age of 18 should be defined as a child suspect. From our experience of working with young people, we believe that many, if not all, those aged 16-17 are often vulnerable and not in a position to be considered an adult, particularly when suspected of a crime. It is our view that there should be no distinction between younger and older children and that all child suspects under the age of 18 should be given the same rights and protection.

- *Question 11: Are current safeguards sufficient to protect the EU Convention of Human Rights of the child suspect? If not, what other provision should be made for the protection of child suspects?*

We believe that the parents and guardians of child suspects should always be informed and given access to their children as early as possible after their detention or arrest. They should also be present during any interview.

It is our view that legal advice should be mandatory and given to all children on arrest or detention. A person appointed to promote legal aid should be afforded the opportunity to speak with the child prior to any police questioning. They should also be present at any interview of a child suspect. From our experience of working with young people it would appear to us that a number of them would have benefited from legal advice given to them much earlier in the process. CoE guidelines also state that if the police want to ask a child questions, they should normally wait until the child's lawyer and parents are there.

We also believe that readily available and easily accessible information should be given to all child suspects and their parents/guardians explaining to them their rights and any subsequent processes they may be required to go through as a result of their detention or arrest.

- *Question 12: How should the question waiver be approached in respect of children?*

There should be no waiver for children. Legal advice should be mandatory. We understand that this may lead to some additional time questioning a child suspect, but believe that this wouldn't be considerable and that the

benefits of legal advice would outweigh any additional length taken to question the child.

If you would like further information then please contact:

Richard Meade
Public Affairs Officer
Barnardo's Scotland
235 Corstorphine Road
Edinburgh EH12 7AR

Tel: 0131 334 9893

Email: richard.meade@barnardos.org.uk