Barnardo’s NI response to the DOJ consultation
‘Reform of publicly funded legal representation in the Civil and Family Courts’

Introduction

Barnardo’s NI is the largest children’s charity in Northern Ireland. We work with almost 11,000 children, young people and families in more than 40 different services and programmes, and in over 150 schools. These services range from work with children on the edge of the care system or already in care to early intervention programmes and family support.

Through our broad service base Barnardo’s NI regularly engages with children, parents and practitioners to help inform policy development. Our work with families and children also includes assessment and therapeutic support services and family mediation for families going through the process of divorce and/or separation. Any legal reforms to the family courts are therefore relevant to many of the families we work with and their experiences form the basis of this consultation response.

Overview

Barnardo’s NI believes that, where possible, involvement of the courts in respect of residence and contact arrangements for children should be kept to a minimum. In our experience, most parents are best placed to make these important decisions and should be facilitated in doing so through a range of child-focused alternatives.

The court process is also costly and its traditionally adversarial approach often very stressful for everyone involved. In private law, non-court resolutions such as mediation can be effective in reducing those pressures more quickly while helping preserve family relationships.

We have become increasingly concerned about the number of instances where inappropriate use of senior counsel has complicated and protracted cases unnecessarily, often over a period of several years. Barnardo’s NI therefore supported the recommendation from
the Access to Justice Review that senior counsel should not be requested for proceedings in the Family Care Centre, County Court or High Court other than in exceptional circumstances.

Following on from that we welcome the proposals in the current consultation to regulate the circumstances for which authority for counsel may be granted. Our primary concern is that children involved in civil proceedings receive the best possible service in a timely fashion. Their fundamental rights should be protected and their views heard by the courts and taken into account. Barnardo’s NI does not believe that these proposals compromise children’s rights and are therefore generally supportive of the reforms. We have provided some further points for consideration in response to the following consultation questions.

Consultation Questions

Q1. Yes – Barnardo’s NI agrees that in all circumstances prior authority for funding should be sought before the engagement of senior or junior counsel in civil or family proceedings at any court tier. We believe this will help to address some of the significant increase in associated legal aid costs.

Q2. Yes – Barnardo’s NI agrees that it is appropriate for criteria to be set down prescribing the circumstances in which authority for counsel for legally assisted persons should be granted, particularly to ensure a consistent and accountable approach.

Q3. Yes – Barnardo’s NI broadly agrees that authority for counsel in publicly funded Children Order cases in the Family Proceedings Courts in Northern Ireland should be limited to cases where there are related criminal proceedings concerning allegations of serious sexual assault or physical abuse. The increasing trend in private law cases to involve junior and senior counsel in issues such as agreeing appropriate contact times contributes extensively to spiralling court costs and in our experience can polarise parents even further. Barnardo’s believes a more constructive approach in these instances would be to divert greater numbers of parents away from the courts and encourage engagement in alternative dispute resolution. However we would strongly recommend due consideration is given to the involvement of appropriate counsel in cases where there are serious child protection concerns, and this may include other criteria than serious sexual assault or physical abuse.
Q4. Yes – Barnardo’s NI generally agrees that authority for senior counsel in publicly funded Children Order cases in the Family Care Centre in Northern Ireland should be limited to cases where there are related criminal proceedings concerning allegations of serious sexual assault or physical abuse. However, we would again strongly recommend due consideration is given to extending that criteria where there are other serious child protection concerns.

Q5. Yes – Barnardo’s NI agrees that authority for senior counsel in publicly funded Children Order cases being dealt with in the High Court in Northern Ireland should be granted only where there are complex matters of law or fact on an issue affecting the applicant, the case is wholly different from the norm at that level and it is judged that the issues could not reasonably be presented by junior counsel.

Q6 & 7 – Barnardo’s NI is not in a position to comment.

Q8. Yes – Barnardo’s NI agrees that where authority is granted for senior counsel (at any tier), reasons must be provided as to why the support of junior counsel is required, and to what extent before funding for both senior and junior may be granted. Contrary to the ‘no delay’ principle in the Children Order it is our experience that the more legal counsel members involved in a case the longer it can take to resolve, which is not in the best interests of the child. We therefore recommend that both senior and junior counsel should only be provided in those cases concerning particularly serious and complex child protection matters.

Q9. In respect of the remuneration of solicitors who would take responsibility for representing clients in court, in circumstances where legal aid funding for counsel would no longer be available, the information provided is not sufficient for Barnardo’s NI to comment.

Q10. Other: The rights and best interests of the child must be paramount in these reforms and in our view the ‘no delay’ principle should be a priority. We strongly advocate increased promotion of parental responsibility and encouraging parents going through separation or divorce to collaborate and resolve issues themselves via alternative dispute resolution. Through Barnardo’s NI direct work with families we know these types of resolutions enable shared decision
making, reduce conflict and are effective, for example last year agreement was achieved in 86% of cases in which we mediated¹.

"We were able to speak in a more constructive manner about the issues that were causing problems and work through them....we are now much better at confronting issues in a positive, timely fashion." (Parent)

Further information:

For further information about any of the issues discussed in this paper, or to find out more about Barnardo’s NI Family Mediation Service, please contact:

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¹ Barnardo’s NI Family Mediation Service operates in the Southern HSCT area and provides a range of services to families going through the process of divorce and separation.