

Introduction

Barnardo's Scotland previously commented on the Scottish Law Commission's report on Rape and Other Sexual Offences and welcomes the opportunity to provide evidence to the Justice Committee on the Sexual Offences (Scotland) Bill.

Barnardo's Scotland manages more than 60 children's services in Scotland, and the safeguarding of children and young people is a central issue. We currently run 3 services in Scotland that work with children and young people who exhibit harmful or problematic sexual behaviour, as well as other services that support children who have been sexually abused. Barnardo's Scotland response has been informed by this practice experience.

Barnardo's Scotland comments are restricted to Part 4 of the Bill which contains proposals relevant to children and young people.

Young Children

Barnardo's Scotland supports the policy objectives of the Bill through the introduction of protective offences where children under the age of 13 years are deemed to not have the capacity to consent by reason of their age.

However, we remain concerned that the recommendations as framed could lead to criminalisation of some children under 13 years on account of their sexual behaviour.

Our services dealing with young people with sexually harmful behaviour are aware of the potential for instances where there has been an admission of sexual activity involving two children under 13 years and where there has been no evidence of coercion. Barnardo's Scotland's understanding of the proposals in the Bill is that this would be treated as rape on the part of the boy and the principle of strict liability would mean that there would be no defence possible, with the matter being dealt with by the Procurator Fiscal. Barnardo's Scotland understands that this is not the policy intention of the Bill and suggests that in this instance there would be merit in jointly remitting the case to both Procurator Fiscal and the Reporter to ascertain where the case should best be heard. This would allow a balancing of the interest of the children and the principle of public interest.

Older Children

Protective measures

Barnardo's Scotland supports the policy objectives and the measures in the Bill where there are protective offences against children aged between 13 and 16, where committed by a person aged 16 years or over and we believe this will continue to safeguard vulnerable young people in this age group from sexual exploitation.

Decriminalising consensual penetrative sex between 13-15 year olds

Barnardo's Scotland supported the Scottish Law Commission recommendation which effectively decriminalised consensual sexual intercourse between 13 – 15 year olds. In our view this was a pragmatic response to the reality that, at present, many young people choose to engage in sexual activity at an early age. For instance:

“the median age of first intercourse has fallen to 16 for both females and males with one in three young people being sexually active before age 16.”
(NHS Scotland , 2005)”

In terms of the health of young people there are serious consequences for this early onset of sexual activity. For instance, Scotland has consistently had one of the highest rates of teenage pregnancy in Europe with the rate staying reasonably stable, but high:

“In 2006 there were 57.9 pregnancies per 1000 females aged below 20 (denominator is females aged 15-19) and 8.1 pregnancies per 1000 females aged below 16 (denominator is females aged 13-15)”
(NHS, ISD, 2008)

There is a strong link with the rate of teenage pregnancy and relative levels of deprivation and vulnerability:

“There is a strong deprivation gradient. The most deprived groups have approximately ten times the rate of delivery as the least deprived, and twice the rate of abortion. These proportions have not varied much over the most recently available seven years, and do not vary much with age.”
(NHS, ISD, 2008)

It is known that the groups most vulnerable in terms of sexual health are:

“young people living in deprived areas, those with low aspirations, looked after young people, young people who are lesbian, gay or bisexual, youth offenders, those from black and minority communities and those with learning disabilities.”
(NHS Scotland, 2005)

An example of this effect is the alarming rise in the incidence of chlamydia, where:

“between 1993 and 2003 there has been a 40% increase in chlamydia diagnoses in females less than 15 years old.”

These worrying statistics are against a backdrop of the current position where consensual sexual intercourse between 13-15 year olds is regarded as a criminal offence. Yet young people continue to engage in under-age sex with serious consequences to their health. Barnardo's Scotland believes that having their behaviour regarded as a criminal offence actually lessens the chances of them seeking out quality advice and information, where this is available. In practice the level and quality of sexual health education/information which young people receive is patchy. In Scotland, the curriculum is non-statutory and responsibility for what is taught rests with local authorities and schools, taking into account national guidelines and advice – resulting in an inconsistent approach to sexual and relationship education.

Barnardo's Scotland intention in supporting a move to decriminalise consensual sexual intercourse between those aged 13-15 years is to maximise the opportunity for them to access appropriate health services. Healthcare personnel are generally clear about their role in providing sexual health services and advice for young people aged 13-16. The problem is reaching the most vulnerable groups. Different professionals following different codes of practice regarding confidentiality, for instance, teachers, healthcare staff and social workers, which can further add to young people's anxieties about breaches of confidentiality. This is borne out in findings of young people's views:

“There is a need for consistency of practice, and the highest of professional standards, in terms of confidentiality. All young people, but especially under 16 year olds, fear that adults will break confidentiality. If young people perceive that such breaches are likely they will not use services when they need them. Young people identify their concern over confidentiality is particularly strong in the school setting.”
(Morrison and McCulloch, 2003)

Removing the criminalisation of sexual activity could help provide a more consistent approach to helping young people take appropriate action to protect their sexual health and wellbeing.

Barnardo's Scotland recognises that how the message is portrayed is as important as the message itself. It is a subtle message that decriminalises this behaviour whilst seeking to dissuade young people from engaging in it in the first place. For this reason, Barnardo's Scotland suggested that it was important to avoid the perception that the age of consent had been changed. We are aware that many young people receive information on sexual health through the media and that the reporting of this issue can be heated and that:

“In the absence of other reliable sources of information and advice, unbalanced and inaccurate media messages can lead to pressures and confusion over the

realities of sex and sexuality. Young women, in particular, reported the media as one of their main sources of information.”
(NHS Health Scotland, 2005)

A lack of knowledge about available services combined with confidentiality fears are a factor in preventing young people from seeking the help they need. A change in the law could enable appropriate support to be made available in a non punitive way and which is in the best interests of the individual child or young person. However, it would need to be accompanied by a comprehensive sexual health programme, which is currently patchy in its coverage. Barnardo's Scotland suggests this would need to be addressed in parallel with the introduction of any new measures.

It would also require the re-instatement of the proposal to form a new ground of referral to the Reporter where there were welfare concerns relating to the sexual behaviour.

Other matters

Barnardo's Scotland's understanding is that, at present, where there is a recorded charge of unlawful sexual intercourse, the discretion to place this information on subsequent disclosure forms rests with the Police. This can lead to situations where consensual sexual intercourse for 13-15 years olds can be entered into Disclosure checks, because of the sexual nature of the offence. The long term effect of a young person's consensual sexual activity and a criminal offence resulting could have a significant impact on their career opportunities at a later date.

Barnardo's Scotland is aware that there have been only 8 cases in the past three years, where matters of unlawful sexual intercourse involving 13-15 year olds were dealt with through court proceedings. The potential gain by removing the criminal aspect of this could be outweighed by the potential benefits in terms of uptake of health services. This could have the impact of changing their behaviour, or at least assist them to protect their health, however, at present, young people hide their sexual behaviour resulting in continued high levels of teenage pregnancy, increasing levels of chlamydia, affecting the most vulnerable children to a disproportionate degree.

Barnardo's Scotland understanding of the Bill proposals is that consensual penetrative sex remains a criminal offence between 13-15 year olds, but all other consensual activity is not. It is also our understanding that where there is consensual penetrative sex, it is now an offence for both parties, which could raise an issue of whether a person charged could also be a potential victim of an offence. In general terms, both of these proposals require a clear understanding of the law on the part of young people and further strengthens Barnardo's Scotland's calls for consistent coverage of sexual health services. It is important that, what ever results come from the Bill, there is a need to have an improved provision of a comprehensive sexual health approaches for young people. Recent government announcements in terms of rural areas are encouraging. It would

be useful if a similar approach was extended to the rest of Scotland in line with the comment:

“the evidence points to having a combined multi-faceted approach comprising sex and relationships education across a range of settings supported by parents and professionals, improved access to specialist and generic sexual health services and a systematic marketing of positive sexual health messages. The greatest short term improvements may be yielded by targeting those most at risk from sexual ill health”
(NHS Health Scotland, 2005)

In conclusion, Barnardo’s Scotland believes decriminalising consensual sexual activity for 13-16 year olds would have health related benefits for young people. It would need to be accompanied by comprehensive sexual health services, which is required in any case, whatever proposals come from the Bill.

References

Morrison C. McCulloch, C. (2003) *All I Want: A review of specialist sexual health services for young people* Edinburgh: Healthy Respect

NHS Health Scotland (2005) *Promoting a Healthy Respect: what does the evidence support Briefing Paper 2: Sexual Health and Wellbeing Learning Network* Glasgow: Health Scotland

NHS, ISD Scotland, (2008)

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