

Barnardo's NI

Response to the Review of the Law on Child Sexual Exploitation

April 2019

Barnardo's NI is the largest children's charity in Northern Ireland. We work with approximately 10,000 children, young people and families, across more than 50 different services and programmes, and in over 200 schools. We provide a wide range of services, from providing early intervention services to working directly with children and young people in need of support. We believe that every child deserves the best possible start in life, and our service provision reflects that philosophy.

Barnardo's NI welcomes the opportunity to comment on the Review of the Law on Child Sexual Exploitation. Our comments are informed by our experience of supporting children, young people and families affected by child sexual abuse. Our regional service, Safe Choices, is a specialist child sexual exploitation service, which supports children, young people and families affected by, or at risk of, sexual abuse, and can provide specialist therapeutic support for children who have experienced sexual exploitation.

We also have a range of other relevant service delivery experiences. Since April 2018, we have delivered the Independent Guardians Service, which provides guardians for separated children, including those who are victims, or potential victims, of human trafficking. We also have a varied portfolio of mental and emotional health and wellbeing services, reflecting an ACEs (Adverse Childhood Experiences) -aware approach and trauma-informed practice ethos.

This response provides general comments on the consultation overall before looking at the specific proposals made in the consultation.

1. General comments

- 1.1. Barnardo's NI strongly welcomes the proposals to change the language currently used in legislation around child sexual exploitation (CSE). However, we believe it is crucially important that these changes are applied consistently in all Departmental communication and documentation e.g. procedure guides, policy documents, and consultations. A cultural shift is needed in the way we talk about, and address, CSE in our society, and a wholesale change in language is the first step towards that.
- 1.2. Barnardo's NI would also like to emphasise that a wider conversation is needed about the 'stereotypical predator' and that many young people's experiences do not fit this mould. Our service experience indicates that peer-on-peer cases are a common trend, and a more nuanced approach is needed to address these cases. Children who display harmful sexual behaviour should not be criminalised; this is a safeguarding issue and these young people should be referred to the appropriate early intervention services to prevent the escalation of these behaviours and address the underlying factors.
- 1.3. We welcome the steps taken to action the recommendations of the Marshall Report. However, ongoing monitoring of these changes is needed to ensure they are continued and fit for purpose. Our understanding is that although many recommendations have been implemented, some of the changes, particularly those that required a financial or resource commitment, have since been scaled back.
- 1.4. Finally, Barnardo's NI would like to raise our concern that this review and consultation has been published while the final recommendations from the Gillen Review are pending. The Gillen Review into the law and procedures in serious sexual offences examined many of the topics which this review touches upon, and the preliminary report offered recommendations regarding the cultural shift needed to change attitudes in Northern Ireland. Barnardo's NI would strongly urge that this review take the final Gillen recommendations into consideration when finalising its proposals.

2. Consultation proposals

Numbers at the start of each paragraph below refer to the corresponding consultation proposal.

2.1. *Legislative references to 'child prostitute' and 'child pornography'*

1(a): Barnardo's NI welcomes the proposal to remove legislative references to 'child prostitute', 'child prostitution' and 'child pornography'. These terms suggest consent, whereas the use of children for prostitution is child sexual abuse and exploitation. This term can act as a barrier to removing stigma and to ensuring children and young people who have been abused can access support.

1(b): Child sexual exploitation should be considered as child abuse, and any definition should clearly state this. Barnardo's NI's concern with the proposed definition of child sexual exploitation is the emphasis on a transactional relationship. Feedback from our service experience indicates that this is not always the case in reality, and that often CSE occurs where there is an emotional, protection or attachment need in the victim, which is exploited by the perpetrator.

2.2. *Inclusion of live streamed videos in CSE offences*

2(a): Barnardo's NI supports the proposal to amend the law to ensure that live streaming and other transmissions are included for the purposes of the related offences.

2.3. *Defence of 'reasonable belief'*

4(a)-(d): We welcome the proposed changes regarding defence of reasonable belief. However, we believe there are further changes that should also be considered, please see below:

4(e): Barnardo's NI believes that there is a balance to be struck between the right to privacy of an individual and protecting the best interest of the child. For cases of child sexual exploitation and abuse, conviction rates are low, attrition of cases is high and many children do not go through with the gruelling ordeal of a trial after the charging stage; these issues are highlighted clearly in the preliminary report of the Gillen Review. Therefore, Barnardo's NI recommends that where the defendant has previously been charged with a sexual offence against a child, the defendant should not be allowed to use a defence of reasonable belief. That previous charge should constitute sufficient warning to the defendant in relation to the law on sexual activity with children. In addition, Barnardo's NI believe it is crucial that this review

reflects the reality of CSE, and recognises that many cases involve peer-on-peer complications. These proposals do not take into consideration the complexities that arise when the perpetrator and the victim are close in age. Furthermore, there are considerations regarding disability and unconscious bias (e.g. in terms of gender and ethnicity) which have not been considered. We urge the Department to monitor these cases and keep this aspect of the law under review.

2.4. *Abuse of trust offences*

5(a): Barnardo's NI strongly disagrees with the proposal not to extend abuse of trust offences to additional groups that have close contact with children. Barnardo's NI believes it is crucial that abuse of trust includes anyone with pastoral or emotional care for children, including (but not limited to) sports coaches. It is important that this Review considers the importance of relationships for children, particularly vulnerable children, and the lasting impact that abuse of trust within an adult-child relationship can have on that child. The focus of abuse of trust cases should be on the trust and relationship between the adult and child, rather than the title the adult holds. This adult is abusing both their position of trust, and the trust placed in them by the child.

2.5. *Indecent 'self' images of children under 18*

6(a): We agree that the current law in relation to indecent images of children is appropriate, and welcome the intention of the law in protecting children from exploitation. However, we have some concerns that PPS decisions for non-court diversions, such as youth conferences or cautions, could still result in a permanent criminal record being made, particularly where it is a case of a self-image. Paragraph 4.60 states that the current implementation protects young people from unnecessary criminalisation, however if the result attracts a criminal record, the young person has been criminalised. Barnardo's NI recommends that Prosecution Guidelines flag these cases as safeguarding concerns and directs young people to early intervention services, rather than criminal justice, avoiding the creation of a criminal record.

2.6. *Adults masquerading as children online*

8(a): Barnardo's NI would strongly urge that the law is changed to create a new offence of an adult masquerading as a child online. In these cases there are serious child protection and safeguarding issues that must be prioritised, and the best interests of the child must come

before trying to protect an adult who wants to hide an embarrassing or immature hobby. Furthermore, in any scenario, including when an adult has no intention of committing an offence, an adult who is masquerading as a child, in order to interact with children, is breaching the principle of informed consent. A child cannot consent to interacting with an adult online, if that adult is pretending to be a child.

2.7. *Up-skirting*

9(a): We fully support the recommendation to change the law to make up-skirting a criminal offence and are broadly supportive of the direction outlined, and we recommend that this move is accompanied by education to prevent such cases and promote understanding. However, we have some concerns about the proposed definition of up-skirting, please see below:

9(b): Barnardo's NI is concerned about the proposal to amend the law in line with the definition of up-skirting used in Scotland, Wales and England. This definition includes the condition that the person acted for "the purposes of obtaining sexual gratification or humiliating, distressing or alarming the individual". The act of up-skirting itself has a detrimental impact on the victim, regardless of the purported intention of the perpetrator and we would recommend that the definition of up-skirting reflects this.

2.8. *Child sex dolls*

10(a): We believe it is crucially important that the issue of child sex dolls is seen primarily as a safeguarding issue. Northern Ireland should take a proactive, preventative approach on this matter as part of this Review, rather than waiting for other jurisdictions to take the lead. It is crucial that this matter is closely monitored for trends and research into this area to ensure the legislation stays up to date and responsive to emerging issues.

2.9. *Recovery orders for children not in care*

13(a): Barnardo's NI believes it is important that recovery orders are extended to apply to children not in care who may have been abducted. CSE does not discriminate, and despite the extra vulnerabilities of children in care, all children should have the same level of protection. A multi-agency approach is crucial to effectively risk assess and deal with each case, and would also be helpful in identifying instances of malicious or vexatious applications.

2.10. *Police powers to request information from hotel type accommodation*

14(a): Barnardo's NI welcomes the proposal to introduce new powers to allow police to request information on guests staying in hotel type accommodation. It is recommended that these new powers should go hand-in-hand with education and awareness-raising for those working in the night-time economy. Safeguarding of children is everyone's responsibility and we need to engage all areas of the community to ensure that we do this effectively. This awareness-raising should challenge stereotypes and highlight that not all CSE victims or perpetrators will fit neatly into the preconceptions that are held generally. Furthermore, CSE does not occur exclusively at night or in hotel type accommodation.

Conclusion

Barnardo's NI welcomes the opportunity to respond to this consultation. We recognise the intentions of the Department to strengthen the law to prevent CSE and protect children; we would strongly urge that the best interests of the child is the main consideration in all areas when considering the legislative changes that are needed. We would be happy to engage further with the Department as this Review progresses and beyond, to reflect the experiences and views of the children, young people and families we support.

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