



Barnardo's NI response to
The Public Prosecution Service for Northern Ireland
'Guidelines for the Prosecution of Young Offenders'
Draft for Consultation
May 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 including working with children affected by trauma or adversity, as well as supporting children in or leaving care, promoting good mental health and wellbeing amongst children and young people, and providing family support and early intervention. 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 draft Public Prosecution Service (PPS) Guidelines for the Prosecution of Young Offenders. Our comments are informed by our experiences of supporting children, young people and families. Amongst our priority areas for service delivery and policy development are young people's mental health and wellbeing, children in and leaving care, and children affected by sexual abuse and exploitation. We therefore see relevance across our portfolio to these draft Guidelines, both in relation to victims and suspects.

We welcome the development of these draft Guidelines and the effort the PPS has shown in engaging stakeholders; Barnardo's NI previously submitted information as part of the PPS development of youth justice policy, and subsequently met with representatives. In particular, we welcome the references to the best interests of the child throughout the draft Guidelines and urge that this principle is embedded in the work of the PPS as it relates to children and young people.

Our comments on a number of the Guidelines' themes are below. Whilst we recognise that some of our comments may relate to the wider youth justice system and are therefore beyond the remit of this consultation, we feel they are important comments to make in the context of considering the prosecution of young people. We believe that to address the issue of youth offending, and prevent offending behaviour by young people, a whole system approach with multi-agency, cross-sector collaboration is needed: this should reflect an emphasis on early intervention and prevention, as well as joined up working with reference to the Children's Services Co-operation Act (2015), considering both the needs and best interests of the child.

1. Decision to Prosecute

We welcome the commitment in 3.2.4 that "regard shall be had to all known relevant facts and circumstances of the young person's environment", and recommend that an ACEs (Adverse Childhood Experiences) aware, trauma-informed approach is adopted. Whilst we are aware that some training has been made available to youth specialists, this should be rolled out across all those involved in youth cases and regularly reviewed and updated as part of a continuous learning programme. Further, we also recommend that, where possible, a multi-agency approach or input to decision making is considered.

We also welcome the intention to make prosecution decisions "as expeditiously as possible" (3.3.1). We know from our service delivery experiences that delays can have a significant and negative impact on young people, whether they are the victim or suspect; a long delay can also have an impact on the proceedings of any eventual trial. Preventing avoidable delay is critical to improving outcomes for young people and for justice.

2. Youth Diversion

We welcome the intention that prosecutors should give particular consideration to diversion in appropriate youth cases (4.1.3). We urge that a trauma-informed approach is taken to this decision-making process and an appropriate diversion that addresses underlying issues is identified. We are concerned, however, that many of the diversionary disposals listed in section 4 attract a criminal record. The impact of this has the potential to be long-lasting and cause damage to the young person's life outcomes: limiting their education, travel and career opportunities due to potential disclosure, as well as risking

further offending behaviour. As the Youth Justice Review (2011) states, “contact with the [youth justice] system actually outweighs any deterrent effect it may have” (p79). We believe that where possible diversionary measures should not attract a formal criminal record and that children are in a position to make an informed choice when accepting a diversionary disposal, with the consequences of that disposal fully explained to them. If a diversionary disposal is deemed appropriate – and we urge they are considered for the vast majority of youth cases – then it is important that the consequences are fully explained to the young person in accessible and age-appropriate language. We also recommend that the suite of diversions includes effective options that do not attract a criminal record, therefore more effectively diverting the young person from the criminal justice system and the associated impact of a criminal record. Whilst we acknowledge this matter is beyond the scope of these Guidelines, we wish to highlight this discrepancy.

We welcome that the draft Guidelines provide some examples of factors to consider in relation to diversion (4.4.3). It is important that this is accompanied by robust training to prevent this becoming a ‘check list’: the key aspect for decision makers to consider is the unique context for every child. Similarly, whilst we welcome the acknowledgement of ACEs as a consideration, it is important to consider how these experiences will be accurately identified and communicated, and how the context of an ACE has an impact on the effect on the child. Further, the example factors provided in 4.4.4 should also not be thought of as exhaustive, and each individual context will provide different considerations: for example, basing the decision to prosecute on “the young person has previously been diverted but has not fulfilled the requirements of the disposal” ignores the potential that the very reason a diversionary disposal was originally identified (e.g. because of the child’s circumstances) acted as a barrier to the young person fulfilling the requirements of the disposal. In such a scenario, the decision to prosecute could therefore exacerbate a situation previously identified by the PPS, and miss an important opportunity to enable early stage intervention, and prevent the escalation of offending behaviour, whilst still addressing the harm caused by the offence.

3. Looked After Children and Offending Within Children’s Homes

We welcome that the draft Guidelines recognise the unique situation of children in or leaving care. The Youth Justice Review (2011) highlights

how “there is an over-representation of looked after children, particularly those in residential care, entering the justice system” (p78).

In light of this, we welcome that the draft Guidelines propose that “a criminal justice disposal, whether a prosecution or a diversion, should not be regarded as an automatic response to offending behaviour by a looked after child, irrespective of their criminal history” (5.2.5). By virtue of the fact that the child is within the care system, an ACEs-aware and trauma-informed approach should be taken when considering cases involving children in care.

As highlighted in our submission on the PPS Youth Justice Policy Development (2017), we strongly advocate the use of restorative practice to address offending behaviour in children’s homes wherever possible. Residential staff are in a privileged but challenging role when working directly with children and young people, and relationship breakdowns often lead to increased negative behaviours being exhibited. Restorative practice is an alternative approach to behaviour and relationship management. It is primarily influenced by Social Learning Theory which focuses on learning that can occur within any social context where positive behaviours can be modelled, based on the belief that people learn best by observing the behaviours modelled by others.

Barnardo’s NI previously provided a Restorative Practice Service to 26 care facilities across NI, including six houses in the Juvenile Justice Centre. This service delivered bespoke training to teams and individuals to equip them with the skills and knowledge to deliver a restorative practice approach within the care setting, and also provided ongoing support to the homes to advise on restorative meetings. The service could also be called in to resolve conflict between young people, or between a young person and carer, in order to prevent escalation of the issue and referral to the police; there was also occasional joint-working between care home staff and PSNI to allow for issues to be addressed without criminalisation. The Restorative Practice approach was effective, as it listened to the victim’s needs while also providing the young person with a means to work through their feelings without resorting to violence, therefore preventing the repetition of such behaviour and addressing the underlying causes.

Our understanding is that while restorative practice approaches are still used across residential settings in Northern Ireland, its use and development has dwindled since our training and support service

ended. We believe the full potential and long term benefits of restorative practice in reducing the number of children in care entering the justice system are yet to be realised. However with greater investment and support, the already established restorative systems could be developed to support better outcomes for children in care and address their over-representation in the youth justice system by preventing the need for prosecution through effective restorative practice. We urge that the PPS work with colleagues across the sector to effectively divert young people who are in care away from the criminal justice system by building on such examples of best practice.

4. Mental Health and Learning Disabilities in Young People who Offend

We welcome the recognition of the impact of mental health factors within the draft Guidelines. We recommend that clarity is provided on the three distinct (but not mutually exclusive) definitions of mental illness, mental wellbeing, and learning disability.

It is right that the PPS considers mental capacity when considering prosecution. Given the suspected high number of undiagnosed mental health or learning disability conditions, and the length of time it can take to access support¹, it is important that there are appropriate opportunities for multi-agency input into the PPS decision making process, e.g. social worker, family, or education engagement, to ensure a full picture of the young person's needs is provided. In addition, ongoing training for prosecutors on the identification and effect of various mental health conditions should be made available.

In cases where mental health needs are considered a contributing factor, prosecutors should consider whether a criminal justice response is likely to be effective or if it is likely to risk further escalation of the behaviour, thereby missing an opportunity for effective early stage intervention. Multi-agency working could help address these concerns.

5. Sexual Offences Committed by Young Offenders

Through our service delivery experiences, we understand the impact of sexual offences and strongly advocate the need to support and listen to young people who have been victims of sexual offences.

¹ For more information see 'Still Waiting: a rights based review of mental health services and support for children and young people in Northern Ireland' (2018), Northern Ireland Commissioner for Children and Young People: <https://www.niccy.org/media/3114/niccy-still-waiting-report-sept-18-web.pdf>

We welcome that the draft Guidelines provide a specific section on this type of offence. We recommend that in further developing these Guidelines, the PPS engages with the Review led by Sir John Gillen² into the law and procedures in serious sexual offences in Northern Ireland, as well as the ongoing Review of the Law on Child Sexual Exploitation by the Department of Justice.

We recommend that, in addition to the training in relation to ACEs and trauma referenced in the draft Guidelines, that youth prosecutors and all others working in this area receive ongoing, up-to-date training to ensure they have a robust understanding of relevant issues – many of which are highlighted in the preliminary report of the Gillen Review – such as consent, as well as recognition of child sexual exploitation and coercive behaviours.

In terms of sexual offences by young people, we believe that children who display harmful sexual behaviour should be treated as children first and foremost. We know that children who sexually abuse other children have often already suffered abuse and trauma too. There is a clear need to develop greater understanding of why children offend in this way, including greater recognition of the impact of trauma and adverse childhood experiences on the development of this behaviour; similarly, more research is needed to understand and address the role of online harm in these behaviours. We believe that prevention, via effective early intervention, based on understanding the motivators and causes is an effective approach. In recent years, a report entitled 'Now I know it was wrong: Report of the parliamentary inquiry into support and sanctions for children who display harmful sexual behaviour'³ (2016), chaired by Nusrat Ghani MP and supported by Barnardo's, emphasised the role of early intervention and prevention, including working with schools and the voluntary sector to improve support for parents in keeping their children safe, restrict access to inappropriate online content, and increase young people's understanding of safe and healthy relationships. The report stated that although in serious cases a criminal justice response may be appropriate, "all children in this situation must receive the high-quality therapeutic support they need to address the underlying causes of their behaviour, prevent them from causing further harm to

² Please see the submission made by Barnardo's NI to this Review here: http://www.barnardos.org.uk/barnardosni_gillenreportresponse_14.01.19.pdf

³ https://www.barnardos.org.uk/now_i_know_it_was_wrong.pdf

themselves or others, and enable them to achieve positive outcomes in adulthood” (p6).

With regards to self-images and ‘sexting’, in our response to the Department of Justice’s Review of the Law on Child Sexual Exploitation⁴ (2019), we welcomed the intention of the law in protecting children from exploitation, however we also raised concerns that PPS decisions for non-court diversions could still result in a permanent criminal record being made, particularly where it is a case of a self-image, thereby criminalising the person with a disclosable offence. We therefore recommend that Prosecution Guidelines flag these cases as safeguarding concerns and direct young people to early intervention services, rather than criminal justice, avoiding the creation of a criminal record.

Conclusion

Barnardo’s NI welcomes the opportunity to respond to this consultation on the draft Guidelines for the Prosecution of Young Offenders. We would be happy to engage further with the Public Prosecution Service as it seeks to further develop and implement these Guidelines.

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⁴ Our response will be made available here:

http://www.barnardos.org.uk/what_we_do/northernireland/northern_ireland_campaigning/northern_ireland_consultation_responses.htm