

Barnardo's NI

Response to 'Protecting victims of domestic abuse from being cross-examined by perpetrators in person in family proceedings: a consultation on options for legislation'

September 2019

Barnardo's NI is the largest children's charity in Northern Ireland. We work with approximately 14,000 children, young people and families across more than 40 different services and programmes. We are also a leading provider of schools-based support and social and emotional literacy programmes in Northern Ireland with a presence in approximately 250 schools, reaching more than 12,000 children.

We deliver a wide range of services across Northern Ireland, from providing family support and early intervention, to working directly with children and families who have experienced adversity and need our 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 Department's options for legislation to protect victims of domestic abuse from being cross-examined by perpetrators in person in family proceedings. We have a range of relevant service delivery experiences, focused on promoting better outcomes through family support. Our Family Resource Centres (FRCs) work with parents to undertake Parenting Assessments and Capacity to Change assessments; this work includes helping parents understand how domestic abuse affects the whole family, including children.

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 addresses the proposals in the consultation and makes recommendations on how victims can be further protected, based on our service delivery experience.

1. Option 1 – statutory prohibition

- 1.1 Barnardo's NI agrees with the proposals outlined in Option 1, including where the party has been convicted, cautioned or charged with a specified criminal offence against the person to be cross-examined, or has an "on-notice" civil order for the protection of the person to be cross-examined.
- 1.2 However, we recommend that these protections are extended further to include circumstances where the party has committed the offences outlined against the children or relatives of the person to be cross-examined. The power dynamic in abusive and coercive relationships can often be such that the person being cross-examined may never have been targeted directly, but instead targeted indirectly through abuse against those close to them.

2. Option 2 – discretionary power

- 2.1 Barnardo's NI agrees with the proposal outlined in Option 2. We believe this will offer protection in cases where information arises during proceedings or where a formal complaint was never made to police. We know that domestic abuse is consistently underreported and victims are often reluctant to pursue formal redress. The discretionary power of judges, if implemented effectively, could provide some protection for these victims in cross-examination.
- 2.2 Barnardo's NI believes it is crucial that this change is rolled out alongside training and awareness-raising for judges, so that the impact and representation of domestic abuse is fully understood and not discounted due to stereotypes or misperceptions of behaviours of abusers and victims. This training should be trauma-informed and include methodology for engaging with vulnerable and young victims or witnesses, as well as identifying signs of abuse or trauma.
- 2.3 Guidance must be provided for judges as to the circumstances that may necessitate preventing a party conducting cross-examination although this guidance must be used as indicative rather than exhaustive as each circumstance must be assessed on a case by case basis.
- 2.4 In addition, Barnardo's NI recommends that both parties have access to legal counsel before making representations to the judge regarding the cross-examination. It is essential that both parties have the opportunity to make their case clearly with as much information as possible.

2.5 Further, we suggest that the use of this power is reviewed regularly to ensure fairness and a level of consistency in its application.

3. Further recommendations

3.1 Barnardo's NI recommends that the Department explore digital options to allow those being cross-examined to give their evidence in a safe environment. The Gillen Review: Report into the law and procedures in serious sexual offences in Northern Ireland (2019) highlighted the potential for vulnerable witnesses to give their evidence via video link or pre-recording it. We believe there is potential for this to be used within the family court setting too. Due to the close nature of family proceedings, this could address the potential for the victim to be re-traumatised during cross-examination and may also ensure that the best evidence is obtained.

3.2 Barnardo's NI recognises that the rights of both parties must be protected, however exploring digital options may be a good solution to balancing obtaining the best evidence and protecting victims.

Barnardo's NI welcomes the opportunity to respond to this consultation. We welcome the intentions of the Department to strengthen the law to protect victims of domestic abuse, including children. We would be happy to engage further with the Department to reflect the experiences and views of the families we support.

For further information, please contact:

Trása Canavan

Policy & Research Officer

Barnardo's NI

trasa.canavan@barnardos.org.uk