

Barnardo's Northern Ireland

Evidence to the Committee for Justice

Justice (Sexual Offences and Trafficking Victims) Bill

Barnardo's NI is the largest children's charity in Northern Ireland. Every year we work with more than 18,000 children, young people and families across more than 45 different services and programmes. We are a leading provider of schools-based support, reaching more than 32,000 children in schools across the UK and Ireland through our NI-managed social and emotional literacy programmes.

We deliver a wide range of services, from providing family support and early intervention, to working directly with children and families who have experienced adversity and need our support. Our goal is to achieve better outcomes for more children. To achieve this, we work with partners to build stronger families, safer childhoods and positive futures.

Barnardo's NI welcomes the opportunity to provide written evidence on the Justice (Sexual Offences and Trafficking Victims) Bill to the Committee for Justice. Our comments are informed by our experience supporting children, young people and families affected by, or at risk of, sexual abuse or exploitation. Our regional service, SEEN (Sexual Exploitation Ends Now), 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.

Barnardo's NI's LifeSkills programme is a universal, highly effective, early intervention and prevention programme, designed for whole class in school delivery for 8-14 year olds. LifeSkills concentrates on a preventative approach which shares age-appropriate information with children and young people, providing them with the skills, knowledge, and attitudes to make healthy choices. The LifeSkills programme builds capacity by equipping teachers with the skills to prevent risky behaviours.

Our evidence will focus on those elements of the Bill where we have serious concerns about the safeguarding of children and young people, and whether the proposed legislation will sufficiently address those concerns. We will also emphasise the necessity for amendments to the Bill to ensure children in Northern Ireland enjoy the same protections from abuse as their peers elsewhere in the UK. Finally, it is important to begin the conversation now around the practical implementation of this Bill, and the awareness raising, and educational investment needed to deliver on the aim of protecting children from sexual abuse and exploitation.

1. General comments

- 1.1. Barnardo's NI welcomes the introduction of the Justice (Sexual Offences and Trafficking Victims) Bill. This is an important piece of child protection legislation, and we welcome the Bill's intention to expand protections for children from sexual exploitation and sexual offences.
- 1.2. Barnardo's NI welcomes the provisions to amend references to '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.
- 1.3. We believe it is crucially important that these language changes are applied consistently in all Departmental communications and documentation e.g., procedure guides, policy documents, and consultations. A cultural shift is needed in the way we talk about, and address, child sexual exploitation (CSE) in our society, and a wholesale change in language is the first step.
- 1.4. Barnardo's NI also welcomes provisions in relation to the:
 - inclusion of live streamed images in the definition of exploitation for sexual purposes;
 - exclusion of public from all serious sexual offence hearings;
 - anonymity for defendants pre-charge;
 - anonymity for complainants to continue after death;
 - inclusion of the offence of abduction of children in care to Sexual Offences Prevention Order arrangements;
 - amendments to the Northern Ireland Human Trafficking Act to extend support to victims of slavery, servitude and forced or compulsory labour; and,
 - to remove the statutory requirement to produce an annual Modern Slavery Strategy.
- 1.5. While we welcome the creation of new offences to capture 'up-skirting' and 'down-blousing', and where an adult masquerades as a child online, we have concerns about how these offences are framed in the Bill. Additionally, we highlight gaps and concerns regarding the definition of 'payment' regarding child abuse and exploitation, and whether the provisions regarding exclusion of the public from cases of a sexual nature where a child is involved go far enough. These concerns are detailed in the sections below, as well as our evidence on potential amendments to the Bill.

2. Clause 1 – Voyeurism (‘up-skirting’ and ‘down-blousing’)

- 2.1. Barnardo’s NI welcomes the creation of new offences to capture ‘up-skirting’ and ‘down-blousing’. However, we are concerned about the framing of the offence, that the person only commits an offence if they did so with the intent of ‘obtaining sexual gratification’ or ‘humiliating, alarming or distressing’ the victim. The act of ‘up-skirting’ or ‘down-blousing’ itself has a detrimental impact on the victim, regardless of the purported intention of the perpetrator^{1,2}. Barnardo’s NI recommends that the scope of intention is widened in this Bill to capture instances where an individual claims the act was ‘just a bit of fun’ or ‘for a laugh’.
- 2.2. We are concerned that by leaving the scope of the intention too narrow, that this offence will in practice become unusable and therefore redundant. The impact of the offence on the victim is not dictated by the purported intention of the perpetrator.

3. Clause 2 – Sexual grooming: pretending to be a child

- 3.1. Barnardo’s NI welcomes the introduction of an offence to capture instances where an adult masquerades as a child in order to gain their trust. However, we are concerned about the proposed framing of the offence; in its current form, a person only commits an offence if they masquerade as a child with a view to grooming a child.
- 3.2. It is essential that any child protection legislation prioritises the best interests of the child as the guiding principle. In cases where an adult is masquerading as a child online, there are serious child protection and safeguarding issues that must be prioritised, and even in the most innocent scenarios the best interests of the child must come before trying to protect an adult who wants to play online games or make friends with children online.
- 3.3. Barnardo’s NI believes that 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, if that adult is pretending to be a child.
- 3.4. Finally, Barnardo’s NI is concerned that by adding this additional layer to the offence, and an additional burden of proof for the justice system to meet, that this offence will in practice become unusable and therefore

¹ <https://www.lawcom.gov.uk/project/taking-making-and-sharing-intimate-images-without-consent/>

² <https://www.nspcc.org.uk/about-us/news-opinion/2021/report-abuse-education-helpline/>

redundant. The Department acknowledges in the Explanatory and Financial Memorandum that the aim is to 'address behaviour at an earlier stage, where offenders pretend to be children as a precursor to grooming or carrying out other offences and where this behaviour would constitute an indicator that they present a risk to children'. If this behaviour is a 'pre-cursor' to grooming, how would intent to groom be proved in court?

- 3.5. A recent case, shared by the NSPCC, highlights the dangers of 'innocent conversations'. The story of Danielle Armitage³ shows how her conversation with the adult, pretending to be a child, started out like any other conversation with a peer: "He had a general gist of how teenagers, children and young adults of that age would talk. So, it felt normal to a point. And he'd talk to me about how my day was, general interests." Under the provisions in this Bill, the behaviour may not have met the threshold of 'intent to groom', and it was only once that trust was established that "he started being quite flirtatious". In these cases, acting early is clearly in the best interests of the child.

4. Clause 3 – Miscellaneous amendments as to sexual offences

- 4.1. Barnardo's NI welcomes the provisions to remove the legislative references to 'child prostitution' and 'child pornography', and the inclusion of live streamed images within the scope of the Sexual Offences (Northern Ireland) Order 2008.
- 4.2. Clause 3 introduces Schedule 2 where payment in relation to child abuse and exploitation is defined. Barnardo's NI is concerned that this definition is too narrow and focuses on a transactional payment. Payment is defined as 'any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount'.
- 4.3. This does not reflect the reality that children and young people face when they are exploited, groomed or abused. Feedback from our service experience indicates that in reality the 'payment' is not always so clear cut or transactional in nature. Often abuse or exploitation occurs where there is an emotional, protection or attachment need in the victim, which is exploited and met by the perpetrator as a form of 'payment'.
- 4.4. We would strongly encourage the Committee to explore widening the definition of 'payment' in relation to child abuse to reflect the real-life

³ <https://news.sky.com/story/dramatic-rise-in-online-linked-sexual-crimes-against-children-leads-to-calls-for-tougher-regulations-12408264>

experience of children and young people in Northern Ireland. A wider definition would reflect that payment is not necessarily transactional, and rather can take an intangible form of meeting protection, emotional or attachment needs. The 2011 Barnardo's NI report, '[Not a World Away](#)', highlights some of the real-life stories of children who experienced sexual abuse or exploitation in Northern Ireland, with the below paragraph summing it up:

*'Although tangible goods were part of the currency of exchange in some of these situations, in most others, the returns for the young person were more intangible, relating to attention, affection and/or a sense of belonging.'*⁴

5. Clause 15 - Serious sexual offences: exclusion of public from court

- 5.1. Barnardo's NI welcomes the provision to exclude the public from the court in serious sexual offence cases. We would recommend that this is extended to all sexual offence cases involving a child, whether they are tried in the Crown or Magistrates' court in order to protect the privacy of the young witnesses or victims who may be involved. Currently in Magistrates' court cases, listed contests of a sexual nature can be observed by the public, which is extremely difficult for the child or young person involved. We would recommend that provisions to the exclude the public from court are extended to include 'all cases of a sexual nature' where a child is involved.

6. Abuse of trust amendment

- 6.1. This Bill presents an opportunity to the Northern Ireland Assembly to address legislative gaps regarding abuse of trust offences in Northern Ireland. Currently, children in Northern Ireland are the only children in the UK not afforded this protection and it is crucial that we close this gap now. Although Barnardo's NI has not had sight of the final amendments, we would encourage Committee members to explore the proposals to extend the scope of abuse of trust offences.
- 6.2. Barnardo's NI has engaged with the Department of Justice as it has developed proposals to close the existing legislative gaps regarding abuse of trust offences. Barnardo's NI strongly believes it is essential that any abuse of trust amendment must be wider in scope than only sporting and religious organisations. It is crucial that abuse of trust

⁴ Page 54, Not a World Away - https://www.barnardos.org.uk/sites/default/files/2020-12/13932_not_a_world_away_full_report.pdf

protection is extended to include anyone with any caring responsibilities for children, whether that is emotional, pastoral or otherwise.

- 6.3. This legislative change should reflect 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. In cases captured under abuse of trust offences, the adult is abusing both their position of trust, and the trust placed in them by the child.
- 6.4. We know that perpetrators of child abuse and exploitation deliberately seek out loopholes in the law, and settings where they will go undetected. As the age of consent to sexual activity is 16 years old, children who are 16 and 17 years old do not have as much protection in the law as children under the age of 16. The argument of consent can be used as a defence by perpetrators in non-statutory settings. If the scope of this amendment is too narrow, perpetrators may still have a wide range of organisations they can target to avail of those remaining loopholes.
- 6.5. Barnardo's NI recognises there are particular nuances concerning peer relationships, such as a 17-year-old team member and a 19-year-old team leader, however the legislation and regulations must address these nuances, rather than regarding it as an insurmountable barrier. It is crucial that peer relationships, where one person has a position of power over another, are managed and monitored by other adults. We do not want to criminalise young people who are in a normal, healthy, peer relationship. However, we cannot avoid taking action to protect children from abuse because it presents a difficult decision or conversation. Furthermore, we cannot design the law around the exceptions to the rule.

7. Equal Protection amendment – remove the defence of reasonable punishment

- 7.1. At present in Northern Ireland, it is lawful for a parent or someone caring for or in charge of a child to use physical punishment. This means that children are afforded less protection from assault than adults. In Scotland, Wales and the Republic of Ireland, legislative steps have been taken to ensure children have equal protection from assault as adults.
- 7.2. Alongside colleagues in many other organisations, such as the Northern Ireland Commissioner for Children and Young People (NICCY), NSPCC NI, the Children's Law Centre (CLC), Parenting NI and Mencap, we have

campaigned for years for equal protection for children in Northern Ireland.

- 7.3. Research⁵ has shown that there is strong, consistent evidence that physical punishment is ineffective in improving children's behaviour, and in fact has an adverse impact on children's wellbeing. The Equally Protected report highlighted a cyclical effect whereby physical punishment increases problematic behaviour, damages family relationships and found links between physical punishment and child maltreatment.
- 7.4. Barnardo's NI recommends that the Committee for Justice considers an amendment to this Justice Bill to amend the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 to remove the defence of 'reasonable punishment' for parents and carers who are accused of assault against a child. This amendment to the Justice Bill would not create a new offence, rather it would remove a legal defence for an existing offence.
- 7.5. Barnardo's NI recommends that this change in the law is accompanied by an awareness raising campaign targeted to parents to make them aware of the change in the law, and where help and advice is available if they need or want parenting support. Legislative change can be a powerful driver for changing public attitudes, and we want to support parents and carers as this change comes into effect. Through our parenting support services and programmes, we work closely with parents and carers to share information and highlight positive parenting and boundaries setting with their children.
- 7.6. When the Welsh Government passed legislation in January 2020 to bring in equal protection for children in Wales, they also committed to an awareness raising campaign to make parents and carers aware of the change in the law. In September 2021, six months before the new legislation comes into force, the Welsh Government launched a high-profile multi-media campaign⁶, which received coverage from major media outlets⁷. Additionally, the Welsh Government announced £2.9m funding over four years to fund positive parenting support to ensure that instead of criminalising parents, they are offered support to develop positive parenting approaches.

⁵ <https://learning.nspcc.org.uk/research-resources/2015/equally-protected>

⁶ <https://gov.wales/wales-begins-countdown-end-physical-punishment-children>

⁷ <https://www.theguardian.com/uk-news/2021/sep/20/welsh-government-launches-smacking-ban-ad-campaign-before-law-change>

8. Implementation of the legislation

- 8.1. How the legislation is implemented is as important as what the law contains. While this legislation aims to address the actions of adults who may wish to cause harm to children, we must also equip children with the skills and knowledge to understand healthy relationships, informed consent, and how to say 'no' when they feel uncomfortable or unsafe, particularly to adults in a position of trust.
- 8.2. Barnardo's NI strongly believes that providing standardised, well-informed Relationships and Sexuality Education (RSE) in all schools as part of the core curriculum would play a key role in educating young people about healthy relationships, consent and boundaries. Barnardo's NI believes that whole-school approaches to well-informed RSE in schools would be invaluable in challenging myths and stereotypes from a young age, as well as encompassing topics such as mental health, wellbeing, and resilience.
- 8.3. While RSE has been a statutory component of the primary and post-primary school curriculum in Northern Ireland since 2001, programme content and delivery is determined by individual schools. The approach to RSE is based on the school's interpretation of guidelines issued by CCEA and is framed in the ethos of the school. This has resulted in large inconsistencies between schools in Northern Ireland in the quality of RSE provided and the content of the RSE programmes.
- 8.4. The importance of standardised, well-informed RSE has been recognised throughout the UK and Ireland. In England, compulsory RSE was rolled out for post-primary schools from September 2020⁸ and in Wales, Sex and Relationships Education (SRE) is a compulsory element of the basic post-primary curriculum. In Ireland a complete review of RSE provision is currently underway to ensure the curriculum is fit for purpose and meets the need of young people today.
- 8.5. Barnardo's NI recommends that RSE should explore digital citizenship, including an understanding of online safety, privacy and ethics. For children growing up in Northern Ireland today, there is little separation between their online and offline worlds, and this has been compounded by the pandemic and shift to online learning. It essential that children

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908013/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf

are provided with the knowledge and skills to understand how their interactions online can impact their life, and that of those around them.

- 8.6. The Barnardo's NI LifeSkills programme, universal, highly effective, early intervention and prevention programme, designed for whole class in school delivery for 8-14 year olds. LifeSkills concentrates on a preventative approach which shares age-appropriate information with children and young people, providing them with the skills, knowledge and attitudes to make healthy choices. Studies have shown that LifeSkills can reduce the prevalence of risk-taking behaviours by up to 75%, with effects lasting 12 years⁹. The LifeSkills programme builds capacity by equipping teachers with the skills to prevent risky behaviours.
- 8.7. A 2019 study¹⁰ funded by the National Lottery Community Fund highlighted the link between poor mental health and lower educational outcomes. The LifeSkills programme aims to develop resilience and practical skills that children can use to address difficult situations that may arise in their life. For example, children are taught how to ask for help and how to provide help to their peers, as well as learning seven different ways to say 'no'.
- 8.8. Finally, good quality RSE has an important role to play in addressing and preventing harmful sexual behaviour in children. Additionally, children who display harmful sexual behaviour should be treated as children first and foremost. Rather than regarding this as a justice matter, this is a safeguarding issue and children who display harmful sexual behaviour should be referred to appropriate early intervention services to prevent the escalation of these behaviours and address the underlying factors. We believe that prevention, via effective early intervention, based on understanding the motivators and causes is an effective approach.

Barnardo's NI welcomes the opportunity to provide written evidence to the Committee for Justice on the Justice (Sexual Offences and Trafficking Victims) Bill. We welcome the intention of the Bill to strengthen the law to protect children from sexual offences and exploitation, however the current provisions fall short. The concerns we have highlighted above must be addressed if this Bill is to become effective, functional legislation.

⁹ For more information on LifeSkills, see '[LifeSkills - Findings from the implementation of Botvin LifeSkills within North Down and Ards](#)' (2019)

¹⁰ <https://www.ucl.ac.uk/brain-sciences/news/2019/feb/study-links-poor-mental-health-educational-outcomes>

Furthermore, Barnardo's NI strongly recommends that amendments are made to the Bill to protect children in Northern Ireland from abuse and grooming by a person in a position of trust, as well as amendments which would provide children with equal protection from assault, as adults currently enjoy.

We would welcome the opportunity to provide oral evidence to the Committee to provide further details, answer any questions that Members may have and reflect the experiences of the children and families we support.

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