



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Justice (Sexual Offences and Trafficking  
Victims) Bill: Barnardo's Northern Ireland;  
NSPCC Northern Ireland

11 November 2021

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr Mervyn Storey (Chairperson)  
Ms Sinéad Ennis (Deputy Chairperson)  
Mr Doug Beattie  
Ms Sinéad Bradley  
Ms Jemma Dolan  
Mr Robin Newton  
Mr Peter Weir  
Miss Rachel Woods

**Witnesses:**

Ms Trása Canavan	Barnardo's Northern Ireland
Ms Bronagh Muldoon	NSPCC Northern Ireland
Ms Orla O'Hagan	NSPCC Northern Ireland
Ms Natalie Whelehan	NSPCC Northern Ireland

**The Chairperson (Mr Storey):** I welcome representatives from the NSPCC and Barnardo's, who are attending today to give evidence on the Bill. Apologies if we have kept you longer than anticipated, and thank you for being here. Please make your presentations, and, undoubtedly, members will have questions. Thank you for the work that you do and for the submission that you have given us.

**Ms Natalie Whelehan (NSPCC Northern Ireland):** Thanks very much for inviting us to address the Committee today. We are grateful for the opportunity to be here. We welcome the Bill, and we hope that our input today is useful to you in your consideration of it.

We welcome the introduction of the upskirting and downblousing offences in clause 1. We would welcome the Committee's giving consideration to the motive requirements beyond sexual gratification or to humiliate, alarm or distress the subject of the taking or recording of images or video. Those issues are being considered as part of the consultation by the Law Commission for England and Wales on intimate image abuse. We would also support an amendment to the additional voyeurism offences to include threats to share images where there is an intention to cause fear that those threats will be acted upon.

Clause 2 creates four new offences regarding adults masquerading as a child. We fully support the intention of the new offences to disrupt grooming or other offences earlier where that behaviour indicates a risk to children. However, we are challenged as to how it will be proved in practice that someone is communicating with a child with the intention of subsequently committing an offence.

Clause 3 covers miscellaneous amendments as to sexual offences. We strongly support the proposed removal of legislative references to prostitute, prostitution and pornography, which misrepresent the abuse and harm that occur to children in those contexts. While the Bill does not propose to make any further changes to the law in that area, we believe that the definition of payment in the context of those offences should be considered by the Committee. Child sexual exploitation (CSE) cases often involve complex dynamics between a victim and perpetrator. They may involve intangible forms of exchange, reward or inducement, such as affection or protection for the victim. We believe that the definition of payments should be extended to include other inducements to ensure that it is in line with regional Cooperating to Safeguard Children guidance and broad enough to capture the wide range of cases of CSE.

Clauses 4 to 14 deal with anonymity and privacy. Again, we support those provisions, which should strengthen protections for complainants and encourage more victims to report abuse and seek support.

Clause 15 proposes to exclude the public from court in serious sexual offence cases. We would like to see that provision going further to offer greater protection to child victims and their families. We recommend that the Committee consider extending exclusion from proceedings to all sexual offence cases involving a child, whether those are tried in the Crown Court or Magistrates' Court. We believe that that is necessary to protect the privacy and anonymity of children, and we do not believe that allowing members of the public to view sexual offence court proceedings involving a child is in the child's best interests.

On the planned amendments, we welcome the abolition of the rough sex defence. That will outlaw the use of consent as a defence to serious harm for sexual gratification. We also support the proposed extension to existing revenge porn provisions to include making a threat of publication with the intent to cause distress and offence.

We warmly welcome the proposed amendment to widen the scope of the current law on abuse of trust to strengthen protections for 16- and 17-year-olds in non-statutory settings. Currently, it is illegal only for individuals within defined statutory roles to engage in sexual activity with a 16- or 17-year-old under their supervision. For many years, the NSPCC has campaigned for the extension of the position of trust offences to include all adults in positions of power and authority over children aged 16 and 17, regardless of the setting. We are therefore disappointed to learn that it is intended to extend the abuse of trust offences to cover adults in sport and religious settings only, with a delegated power to enable extension of those settings at a future stage, should it be considered necessary. That position replicates the proposed legislative amendment in England and Wales under the Police, Crime, Sentencing and Courts Bill. If that approach is taken in Northern Ireland, adults working in non-statutory settings in a position of trust to a 16- and 17-year-old in areas other than religion and sport will remain outside of the law. That conflicts with views expressed in the Department's public consultation on CSE law in February 2019 and in the joint stakeholder workshop that the NSPCC facilitated with the Department in May 2021, at which respondents overwhelmingly supported an inclusive approach to legislative change that should include all adults working in a position of trust to a child.

There is also considerable ambiguity about the scope of the amendment, if it applies to religious and sport settings only. It is unclear what specific activities will be included in the definition, and it could lead to a range of bizarre scenarios: for example, a 16- or 17-year-old may be protected while engaging in a dance or drama class only if the class is connected with, or carried out on the premises of, a sporting or religious organisation. That is a considerable gap in protection for young people, and it creates unnecessary legal uncertainty. In addition, it is unclear whether organisations with a religious ethos, including such uniformed bodies as scouts, guides, cadets etc, would be included in the amendment. While we have not had sight of the drafted amendment, we recommend that consideration be given to the inclusion of "hobby or extracurricular activity" in addition to sport and religious settings, with a list of activities detailed in guidance. That would ensure that the provision was broad enough to capture a wider range of settings where adults have influence and power over children, and it would ensure that there was enough clarity and certainty in its application. The proposed further expansion of protection enabled by the power to add or remove fields of activity by way of affirmative instrument is welcome. To further strengthen and future-proof the provision, consideration should also be given to the inclusion of a statutory review mechanism.

One additional area in need of urgent legal reform in Northern Ireland that is not addressed in the Bill is the removal of the defence of reasonable punishment to afford children protection from assault that is equal to that afforded to adults. In Northern Ireland, the law provides for a defence of reasonable

punishment for parents and carers who are accused of assault against a child. This is a key public protection issue, and we would support the removal of that defence being brought forward as an amendment to the Bill.

A wealth of research shows that the use of physical punishment is ineffective in changing the behaviour of children in the long term and can be extremely damaging for children's development. In 2015, an international literature review found strong evidence that physical punishment increases aggression, antisocial behaviour, depression and anxiety in children, which may continue long into their adult lives. Harsh forms of discipline, and physical forms of abuse in particular, can have long-lasting impacts on future behaviour and mental health. In 2020, research by Harvard University found that physical punishment experienced by very young children predated reductions in cognitive development. Physical punishment is also among a range of important risk factors for child physical abuse. Most physical abuse starts out as physical punishment in an attempt to correct misbehaviour, and the punishment escalates in force and intensity. There is evidence that the removal of the legal defence is associated with accelerated declines in the prevalence of physical punishment and reductions in severe physical abuse. That is particularly pertinent for Northern Ireland, where physical abuse is the main reason for a child or young person being placed on the Northern Ireland child protection register: 31% of the children on the child protection register are on it due to physical abuse.

We need to take urgent action to protect our children from abuse. Legal change is a vital part of that. A change to the law on physical punishment in Northern Ireland is solely about protecting children and keeping them safe from harm. The widespread criminalisation of parents has not been the effect in any of the countries that have passed similar laws. If the defence of reasonable punishment were to be removed, accusations of assault against a child would be investigated by the police and social services exactly as they are now. The thresholds for intervention would not change. The removal of the defence of reasonable punishment in Northern Ireland would lead to better public protection and legal protections for children from the extremely damaging effects of physical punishment.

**Ms Trása Canavan (Barnardo's Northern Ireland):** Thank you to the Committee for having us here today. I am the senior policy and public affairs lead for Barnardo's Northern Ireland. Barnardo's is the largest children's charity in Northern Ireland. In the past year, we supported over 18,000 children, young people and families throughout Northern Ireland in more than 45 different services and programmes. The evidence that we submitted to the Committee in writing, and that which I will share with you here today, is informed by our experience of supporting children and young people who experienced abuse. For example, our regional service SEEN, which stands for "sexual exploitation ends now", is a specialist child sexual exploitation service that supports children, young people and families affected by or at risk of child sexual exploitation. It can provide specialist therapeutic support for children who have experienced sexual exploitation.

We also deliver universal early intervention and prevention programmes, such as our LifeSkills programme. That will be really important when we think about the implementation of the Bill and what sits alongside it. Our LifeSkills programme is universal. It is highly effective. It is about early intervention and prevention. It is delivered in classrooms to children aged eight to 14. It is capacity building so we train teachers to deliver it to their classes. Year after year, research has shown that it is highly effective and evidence-based in changing behaviour and attitudes in children.

We very much welcome the Bill, its intention and, in particular, the Committee's scrutiny of it. This is an important piece of child protection legislation, and it seeks to address a number of gaps in our current legislation. Our main concern is about how useable the Bill will be in practice; a theme that I will return to throughout my evidence. A Bill or an Act is only words on a page until we put it into practice. If the provisions in this Bill are unusable as currently drafted, they are, despite the very best of intentions, just words. In that regard, we are concerned about a number of the Bill's proposals: clause 1, which is the voyeurism offence; clause 2, which is:

*"Sexual grooming: pretending to be a child";*

and clause 3, which is the definition of payment regarding child abuse and exploitation.

Our concern around usability is most prominent when looking at clauses 1 and 2. We very much welcome the creation of the new offences of upskirting, downblousing and an adult masquerading as a child, but we are very concerned about how the offences are framed in the Bill and the burden to prove the intent of the perpetrator. We are concerned that, as currently framed, the offences will function only as add-ons when a person has already committed a crime of a much more serious nature, and that behaviour is discovered retrospectively. If that is the case, and if that is the intention

of the Bill, it is not about child protection any more; it is about lengthening sentences and punishments. To protect children, the legislation needs to be usable when the initial offence has been committed, and before it escalates to become more serious harm.

We are also concerned about the proposed definition of payment in clause 3 regarding child abuse and exploitation. It is too narrow. It does not reflect the reality of exploitation in Northern Ireland today. The proposed definition focuses purely on transactional payment rather than the intangible exchange of meeting emotional, protection or attachment needs in the victim, which, in our experience, is much more prevalent here.

Finally, we strongly encourage the Committee to consider the amendments to the Bill in relation to equal protection and abuse of trust. Natalie has given a great rundown of those. It is vital that children in Northern Ireland are afforded the same protection as their peers elsewhere in the UK. The Bill provides the opportunity for the Assembly to do just that. We understand that the Department is drafting the amendments and would welcome the Committee's scrutiny of them. Although we have not had sight of the amendments, we strongly encourage making that amendment as broad as possible. Do not limit it to religious and sporting organisations. We need to focus on the relationship and position of trust that the adult holds, rather than their title or the category of their organisation.

That concludes my comments. I welcome any questions that members might have.

**The Chairperson (Mr Storey):** Thank you. Have there been discussions between you and the Department on the Close the Loophole campaign, which was raised by the NSPCC?

**Ms Whelehan:** Yes. We have been working closely with the Department on that. We have been working on it for a number of years, and we have been trying to get the law changed for some time. There is a gap in the law, and the Department has said that it wants to change it. I do not want to be too critical of the Department of Justice, because it actually has a very full legislative timetable.

**The Chairperson (Mr Storey):** As we know.

**Ms Whelehan:** Yes — *[Laughter]* — as you are much more aware of than me.

In light of the fact that we saw an opportunity to bring forward an amendment to the Bill, we had discussions with the Department about why it felt it could not be brought forward in this mandate. It, rightly, cited capacity. We have been working closely with the Department in partnership to try to build its capacity so that we can help as much as we can. We jointly facilitated a workshop with the Department in May 2021 where there was a broad discussion with a range of organisations about the need for legislative reform and what that should look like in Northern Ireland. We also got a pro bono legal opinion, which we shared with the Department, about the best way to carry out that reform in Northern Ireland in order to make it as inclusive as possible. We know that was the Department's intention at one stage, but it appears to have changed, and we now appear to be going down the same route that was taken in England.

That causes us concern because, as I said in my presentation and in our evidence to the Committee, it does not go as wide as it should and it is also very unclear about who will be captured. Our concern is that some organisations that should be captured in the legislation will perhaps not even be aware of the fact that they will be captured. It will give rise to the sorts of scenarios that we outlined, where, if something is happening that is connected to religion or sport, a 16- or 17-year-old will be protected, but they may not be protected if the incident is not connected to those areas. Therefore, it is very unclear, brings about legal uncertainty and is an area that we would very much like to see the Department extend to include all adults who are in a position of trust for a child, regardless of the setting.

**The Chairperson (Mr Storey):** I know that this is an unfair question — I appreciate the relationship between you and the Department, and our role is to scrutinise the Department — but do you have any sense or were you given any indication that there was a road of travel that the Department was going to take that was then not reflected in the Bill when you saw the details of it? Have you any sense why that was the case?

**Ms Whelehan:** I am not sure. There might be nervousness about the legislation's being too broad. There are lots of examples from elsewhere where settings have been widened and that has been done in an inclusive manner. It has been done in Jersey in quite an inclusive way. It has also been

done in the Republic of Ireland in a much more inclusive way, where settings have not been stipulated.

The other thing to say is that, in England and Wales — I think that we referred to this in our written evidence — a lot of discussion is ongoing about the sport and religion definition. Sarah Champion MP has proposed an amendment to extend that. That is actually going through at the moment. I do not know whether it will be successful, but it is certainly one that we are watching with interest, and our colleagues in the NSPCC in England and Wales are working on it. We feel that, unless we take the opportunity to do that right from the outset, we will have to come back to it in the future. We would very much like to see it being done as inclusively as possible, because there will be children who require those protections, and, if they cannot get them from the outset, harm can happen. I am nervous. The NSPCC does not support the "wait and see" mentality, which is that, if we can collect evidence that abuse happens in those settings, we will change the law. Abusers will familiarise themselves with where they can abuse and where they are outside the law. That is our concern. We would like to see as robust a set of protections as possible in place from the outset.

**The Chairperson (Mr Storey):** This is a final question from me, and then we will go to members. You mentioned a definition and then what is listed in guidance. Is there a risk that, if you have not got the definition right, the guidance will not cover everybody? It is about how you get something that is all-encompassing. Cute lawyers are always able to find a way of ensuring that they can navigate a piece of legislation. Is that part of the Department's nervousness? I am not trying to defend the Department; I am just trying to get a sense for the Committee of what an all-encompassing piece or line would look like in the legislation.

**Ms Whelehan:** You could be right. I am not entirely sure, but we are taking a belt and braces approach by proposing the consideration of adding hobby or extracurricular activity, which could include all those other activities such as dance, drama, music, private tuition etc, with the list of activities to be outlined in guidance. We also propose the further expansion of protection by way of affirmative instrument. We know that the Department is already proposing to do that, which means that further settings could be added. If we had sport, religion, extracurricular activity and hobby, for example, there could be a list of activities in guidance. If a gap were identified further down the line, it could be amended and future-proofed in the way that the Department proposes.

We hope that that would be as all-encompassing as possible. It is always difficult to legislate for every eventuality —

**The Chairperson (Mr Storey):** It is.

**Ms Whelehan:** — but that is how we propose that you get it as close as possible.

**Ms Canavan:** If I could add to that.

**The Chairperson (Mr Storey):** Yes.

**Ms Canavan:** It would be very helpful if the Department shared its proposals for the amendment so that we could scrutinise it and see whether it needs to be tweaked here or there. You are absolutely right that, if we get it wrong in the legislation, there will be problems with the implementation. Let us get the amendment as soon as possible, scrutinise it and get it right.

**The Chairperson (Mr Storey):** Thank you for those answers.

**Ms S Bradley:** I genuinely thank you for your written submission and your presentation today, because there is plenty in there. We could keep you going through each clause, as you have been doing, to get your thoughts and suggestions. You mentioned widening the scope of intention in the voyeurism piece in clause 1 to include actions that were taken just for a bit of fun or a laugh. That got me thinking that, when it is widened to that parameter, are we, whilst trying to list or capture all the scenarios, actually saying that there is no circumstance where somebody would capture an image without upskirting or downblousing? Beyond it being just a bit of fun or a laugh, I am struggling to think what else could possibly be used in that scenario. It is just a thought, so do you have any comment on it?

On the provision on a person pretending to be a child, I was not clear whether you were alluding to there being a lesser offence. You make very well the point about this being legislation that is trying to avoid exploitation, so it is about early intervention. Is that what you were alluding to? I think that you referred to — I have not got it in front of me — a "layer to the offence". Is it possible to have a little more explanation of that?

**Ms Whelehan:** I will have a go at answering that. The NSPCC's position on clause 1 is a bit different in that we are concerned about the limited scope of the intentions. They are problematic from the perspective of victims' rights. The two-pronged approach that the Bill proposes at the minute covers sexual gratification or "humiliating, alarming or distressing" the person who is the subject of the image or recording, but it may not capture the full range of perpetrator behaviours or motivations. Taking a non-consensual, intimate image is deeply upsetting for victims, regardless of the intent, but that is not to say that we are firm in our position on what the provisions on intent should include.

The Law Commission in England and Wales carried out a consultation, which closed in May, on intimate image abuse. It considered whether the offence should focus on a lack of consent and other potential motivations. The upskirting offence in England and Wales, which was introduced in England in 2019, mirrors the upskirting offence that we are talking about today. The consultation considered the limitations and gaps in the law. I encourage the Committee to engage with the Law Commission and to take cognisance of the early findings from that consultation exercise in order to ensure that we legislate in line with the valuable learning from it, especially given how closely linked the two offences are.

Where the proposed motivations are concerned, it is unclear to us whether an image taken to intimidate, silence or extend power over a victim would be captured by the proposed intention to humiliate, alarm or distress. If that is not captured, we would support the intention to exert control or power being added to the proposed motivations. A lot of learning can be gleaned from the Law Commission's consultation, and it may be worth linking with it to see what kinds of issues were raised.

Sinéad made another point on clause 2 and sexual grooming. We are hugely supportive of the intention to introduce the four new offences. We very much welcome the intention to better protect children and to address and disrupt grooming and other behaviour where a risk to children is indicated much earlier. For us, the challenge is about proving it in practice. How do you prove that someone is communicating with a child with the intention of subsequently committing an offence? We are certainly not the experts on that. We discussed it with the Department, and we understand that the issues are being explored by law enforcement, including the PSNI. I assume that law enforcement has the answer to how to do that.

It is really welcome that the Minister is leading the way in closing a gap that has emerged in practice. That will lead to better protection for children, but we will take our steer from law enforcement, and we hope that the operational elements of the Bill can and will be worked through. We certainly caution that the law be kept under review to allow practice to inform any changes that are needed.

**Ms Canavan:** I will come in on that, and I want to go back to clause 1. You wondered whether there were any circumstances that would not be captured under the Bill. I do not know why someone would need to take a picture up someone's skirt without their consent. We are supportive of broadening the definition. We are very concerned about how you would prove that a person intended to humiliate or alarm a person. How do you prove that they intended to get sexual gratification? I do not know how usable that is in practice. Our real concern is that, if someone does it, they will just say, "It was for a laugh or a joke" or x, y and z. Once we start to narrow the scope, the provision would become just words on a page again. That is where we are at. The impact of the offence on the victim is not dictated by the intentions of the perpetrator.

I will move to clause 2, which is:

*"Sexual grooming: pretending to be a child".*

Again, how do you prove that a perpetrator intended to groom someone? I do not imagine they wrote it down on a page. We cannot see what is inside their head, so that intention will be very difficult to prove. I imagine that the offence will be used when someone escalates their behaviour and it becomes sexual grooming. They have then graduated onto a more serious offence. You could look at it retrospectively and say, "Six months ago, they were talking to them, but there was no sexual

grooming, so we will add that offence of communicating with a view to grooming, because they went on to do it".

What reason do we have for an adult to masquerade as a child? That has been sitting with me since the Bill was published. I cannot think of a good reason for an adult to masquerade as a child that is more important than child protection. Therefore, why are we creating the burden that the Public Prosecution Service (PPS) and the PSNI must gather evidence that the person intended to groom? As I say, I do not know what that evidence would look like in practice. What can the PPS or PSNI put before a judge that would allow them to say, "I have met that the burden of proof for you"? That is our major concern with the offence. We absolutely welcome the intention: let us get in early; let us stop grooming. However, I do not think that the offence in the clause, as currently framed, does that.

**Ms S Bradley:** I appreciate that contribution. I see where you are coming from on the burden of proof and the intent. It is as clear as mud, to be quite frank, when you consider how it will roll out operationally, but it is equally challenging to say, "How do we put words on the page that are broad enough to remove that burden but not so broad that they become non-operational?". It is certainly a challenge, and I genuinely appreciate its being brought to our attention. Thank you.

**The Chairperson (Mr Storey):** Before I go to Rachel, let me say that we have asked the Department for its amendments. As soon as the Committee gets them, we will share them.

**Ms Canavan:** Fantastic. Thank you very much.

**The Chairperson (Mr Storey):** I hope that that will be helpful.

**Miss Woods:** I cannot agree more. Why would there be an instance where an adult would need to pretend to be a child? Since we looked at the Bill over the summer, that has never sat well with me. It is the same with clause 1 and the "for a laugh" defence. I raised that at Second Stage, but I do not think that it is covered. That is a defence that could be used. How do you prove that? It is the same with clause 2. There needs to be clarification on both those clauses. If there were any other potential purposes that we would need to capture in the scope of the offence, would you support an amendment to clauses 1 and 2 for those specific issues?

On clause 2, have you had any discussion with the Department about what the effect would be if the requirement for the offence to have the purpose of grooming were removed? Would there be any unintended consequences if we criminalised an adult for pretending to be a child, if that is a behaviour in and of itself?

**Ms Whelehan:** We have had some discussions with the Department about that. As I said, we have concerns about how it will be operationalised. The Department, at that point, shared our concerns and said that it was talking to the PSNI, which assured it that the operational elements could be resolved.

One of the issues that came out of the conversation that we had with the Department was the possibility that a parent could be online pretending to be an adult in order to protect their child. I am not sure if that will ever arise or if there would be a child protection consideration. However, it is not as straightforward as it might appear, and that is why we are a bit reticent about saying that it should be entirely removed. It is certainly a matter that merits a much broader discussion, because I am not sure how it will be operationalised.

When I first read the Bill, the thing that struck me was this: how do you prove intention? I am concerned that that will end up being an additional offence after the other offences have taken place and that the clause will fail in its intention to disrupt grooming as early as we hope. There may well be scenarios that we have not thought about but that the Department is aware of. I would very much welcome being part of a broader discussion to make sure that the clause's intent can be fulfilled.

**Ms Canavan:** May I come in?

**The Chairperson (Mr Storey):** Just on that, and I will say this before I forget, because it is in my head. Operationally for us, and just to let you know, at the end of the presentations, we will supply the police with all the submissions and the Hansard reports of the meetings. The one thing that comes up time and time again is that there is no point in our going out and saying, "Oh look, we've passed this piece of legislation" if it is not worth the paper that it is written on. Operationally, the intent of the

legislation must be carried out. However, if even the intent is questionable, you have to ask the serious question, "Are we doing the right thing here?". Everybody accepts that certain things — they are in the Bill — should not be happening, such as upskirting, downblousing and grooming. As Rachel said, why should any male or female want to pose as a child? I want you to know that those questions will be put to the police, because we want to be absolutely sure that, if that is in the legislation, people who are engaged in those activities will be able to face prosecution.

I am sorry; you wanted to make a comment.

**Ms Canavan:** I really welcome that, and I am really interested to hear what the PSNI has to say. I am not sure whether you also plan to meet the PPS. What information will it be looking for in order to bring a case forward, and what would it say?

**The Chairperson (Mr Storey):** The PPS is coming to the Committee as well.

**Ms Canavan:** Perfect. Brilliant.

Natalie floated the situation — we have talked about this ourselves — of a parent trying to check what is happening with a child. There is actually a major concern there, which you can see in the case that I linked in our written evidence. That involved a young person who was groomed online. It did not escalate to sexual grooming until trust had been established, and it went on to become physical contact and everything awful that you could imagine would happen. Initially, that person was able to establish that trust and that contact because they were a parent. They could understand how kids talk, what conversations they might be having and what things they might be interested in. We may start to say, "Maybe we will let parents do it", but, in fact, we know that perpetrators look for loopholes. That is how they operate. That would be a loophole. There might be cases where a parent genuinely wants to find out, so it would not be in the public interest for the PPS to take forward a case where the evidence can clearly show that a parent just logged on to try to check on their child. That should be quite a clear case to prove. However, if a parent is going on and talking to other children who are not in contact with their child, we have to ask questions about why they are doing that. We need to strengthen this offence, and I would really welcome PSNI and PPS comments on that.

**Miss Woods:** Thank you. I cannot agree more.

Natalie mentioned provisions on abuse of trust that operate in the Republic of Ireland and in Jersey. I cannot remember this off the top of my head: when did that legislation come in? Sorry if that was covered. Are those relatively recent pieces of legislation?

**Ms Whelehan:** I would have to check that, Rachel, or defer to my colleague.

**Ms Orla O'Hagan (NSPCC Northern Ireland):** The Republic of Ireland introduced its legislation in 2017, and Jersey introduced its in 2018.

**Ms Whelehan:** Thank you, Orla.

**Miss Woods:** Thank you very much. Since that legislation came in, are you aware of any significant challenge to making a provision for abuse of trust in settings wider than just in sports and religion? Have issues been raised with that? Is it coming through?

**Ms Whelehan:** No, we are not aware of any major challenges at all. It is not just those two regions that the legislation is operating in. We provided a briefing paper to the Committee in June that gave an overview. I could resend that. It was an overview of all the legislative positions and how they are operating.

In Jersey, one of the drawbacks has been that it was not very well publicised. The problem is that we do not know how well it is going, but we have had conversations with officials from Jersey, and they assure us that there are no major problems with extending it. As I say, it is all explained in a bit more detail in the briefing paper that we provided in June, where we look at how it has been done in various other areas. That gives the Committee a range of legislative options to consider when making the provision as inclusive as possible.

**Mr Newton:** Jersey is so small that everybody would know anyway.

**Ms Whelehan:** Yes, they would just talk to each other.

**Miss Woods:** Finally, on abuse of trust, guidance will obviously be a big issue in outlining abuse of trust and getting people to understand what that means. You talked about that being published in Jersey and people knowing about it. For the purpose of public awareness, would you support the Department having to issue guidance on abuse of trust in conjunction with other Departments? Education will be huge, and it also involves Communities and so on.

**Ms Whelehan:** Absolutely. On positions of trust, there will certainly be a need for guidance and education, but that will be the same for everything in the Bill. Upskirting and downblousing are other areas on which we are going to need specific guidance. Not to detract from positions of trust, but since the offence came in in England in 2019, there have been a number of instances of upskirting in schools, so we are absolutely going to need clear guidance for schools as well on how the provision operates.

We are going to need a public education campaign for young people, because they are going to need to be aware of the consequences of those sorts of actions. Part and parcel of that is good-quality relationships and sexuality education (RSE). We always come back to RSE, but, ultimately, we need to educate children about the types of behaviour that are expected, what the consequences are and what are criminal offences. There is a huge gap there, and I will continue to raise RSE in every context.

We would be more than happy to help the Department and contribute in any way in which we can, as we have done from the outset, to the development of guidance on positions of trust and all such areas and on any public education campaigns, both of which are absolutely necessary.

**Miss Woods:** I cannot agree more on RSE. I, like you, would be raising it at every single opportunity. We have been dealing with various new offences and changes to justice legislation in the past year and a half, and we keep coming back to the need for comprehensive and mandatory RSE for children and young people, let alone adults, on what a healthy relationship is, the consequences of actions, and what you should and should not be doing.

It is an absolute shame that we do not have equal protection in Northern Ireland. It is an absolute disgrace. If we are going to take children's rights seriously and talk about adverse childhood experiences (ACEs), being trauma-informed and all those things that we all like to talk about, that is the kind of action that we need to be taking. That really should be in the Bill. This is touched on in the submissions, but it is an argument that keeps coming up. It is about the potential to criminalise parents, family and the home. It is not an argument that I buy, but it is one that we need to discuss. Will you go into in a wee bit more detail how that has not happened in other jurisdictions and how the argument is countered?

**Ms Whelehan:** I think that I mentioned this in our written evidence, but the first English-speaking country to ban physical punishment, in 2007, was New Zealand. There, it was carefully monitored because, of course, it is a concern. That is not what anybody who is asking for the removal of the defence around equal protection is talking about. We want to change social norms and move things along culturally. We have seen how legislation can have a powerful impact on changing public attitudes and social norms. If you think about seat belts in cars and the smoking ban, all of a sudden, people try to comply with the law. That is how we work. Generally, we are law-abiding citizens.

New Zealand monitored the change in the law closely from 2007 to 2012, and there were eight prosecutions over those five years. I think that it was the police chief who said that parents had not been prosecuted for smacking, and that there had been no change in the levels of reporting of smacking since the law was enacted. This is not about criminalising parents. Doing so is certainly not in the child's best interests, nor is it in the family's best interests. This is about the promotion of non-violent means of parenting.

One thing that needs to accompany a change in the law is a focus on positive parenting and on having a public education campaign about how to parent in a way that is not detrimental to children's mental health in the long term, that will work and that is effective in changing people's behaviour. There has not been that widespread criminalisation of parents, and that is certainly not what we are advocating here.

Interventions would operate in exactly the way in which they do now. In cases of assault against a child, social services interventions and police interventions would not change. We would be very firm on that. If there were concerns about parents assaulting their children, we would very much be advocating a protective welfare approach so that there could be an intervention, whereby those parents are supported to find alternative means of disciplining their children. The evidence certainly shows that it is one of the key risk factors for physical abuse, and we are really concerned about that. If we can legislate to try to prevent physical abuse happening in the future, we have to do that. There is an onus on us to do so. I know that it is a controversial issue in the context of Northern Ireland, but we have to protect our children, particularly given the rise in all kinds of abuse during the COVID pandemic and the rise in the number of accidental deaths of babies in England. We absolutely have to act now. I think that I speak for the children's sector when I make that call.

**Miss Woods:** OK.

**Mr Newton:** Rachel, will you allow me to come in on that point?

**Miss Woods:** Certainly.

**Mr Newton:** Paragraph 7.6 of the evidence from Barnardo's talks about an awareness-raising campaign in Wales. It states:

*"the Welsh Government launched a high-profile multi-media campaign".*

Do you want to say something about that?

**Ms Canavan:** Yes. Anywhere that this is brought in, the concern is that there will be criminalisation of parents. It is about counteracting that concern by raising awareness before the change in the law comes into effect. I believe that the change in the law in Wales comes into effect in March, so Wales has started a really big campaign. I have talked to colleagues in Wales about that. You see the campaign, which is to make people aware that there is to be a change in the law, on buses, on social media and in all these different places. It is absolutely not about criminalising parents. In fact, we hope that no parent is ever criminalised under it. It is really important to point out that we take a very clear line on assault: you cannot assault someone.

We have said that you cannot assault children, but there is a defence that can be used. The line has been blurred. There is a blurry line around assault for the most vulnerable citizens in our society, who are those whom we should be helping the most. By clearing that up and making sure that children have the same protection in Northern Ireland as they do in the rest of the UK, but also that they have the same protection as adults do against assault, we make sure that everyone is on a level playing field. We then bring parents along with us. We have fantastic parenting programmes that show people how to engage with their children and build a really strong and healthy relationship, secure attachment and all those sorts of things. That begins on day one. In fact, it begins before day one. We can do that, and lots of parents are doing it. Sometimes there is an attitude taken of "Oh, it didn't do me any harm", especially if people grew up with it themselves, but somebody pointed out to me years ago that the fact that they can remember the time that dad got out a wooden spoon or that mum got out this or that shows that it stayed with them in a subtle way. Children love their parents and know that their parents love them, but we can do this differently and we can do it better.

**Mr Newton:** Thank you, Rachel.

**Miss Woods:** You are welcome. That is all that I have.

**The Chairperson (Mr Storey):** I think that there was an issue in Wales. Did the Crown Prosecution Service not say that the change in the law would lead to the prosecution of parents who smacked their children?

**Ms Canavan:** Not that I am aware of, but I can check and get back to you.

**The Chairperson (Mr Storey):** There is no doubt that it is a controversial issue. A better way in which to put it might be that it is an issue but there are differing views on it. As a parent, I have a particular view. I would not want to lose the right to be able to chastise my children. As a parent, I have done that, but I did so in love. I had a minister who always used to say to me, "If you can never use that

hand in love, never use it to smack a child". That is a very true saying, and I think that that is sometimes good advice. That is a personal view, however I am not speaking on behalf of the Committee.

**Mr Newton:** I did not realise that Rachel had finished. Otherwise, I would —.

**The Chairperson (Mr Storey):** Did you think that Rachel had more questions? *[Laughter.]*

**Mr Newton:** I did. It would not be like her.

**Miss Woods:** I have plenty more questions. I am just aware of the time.

**Mr Newton:** This is a very simple one. Both organisations mentioned the payment issue in clause 3. I think that I get what you say in your evidence, but perhaps you can expand on it.

**Ms Whelehan:** Yes. We know that clause 3 is intended to remove legislative references to "prostitute", "child prostitution" and "child pornography". We are totally supportive of that, because those terms absolutely misrepresent the harm done to children in these contexts and mask the abuse that happens. Although it is not the intention to look further at those provisions in the Bill, we took the opportunity to raise the issue of the definition of "payment" in the context of the offences, because it is problematic for us.

I refer to the legislation. Article 41(3) of the Sexual Offences (Northern Ireland) Order 2008 defines "payment" 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."*

The issue is that that is very focused on tangible or financial rewards. Many CSE cases may involve a tangible or financial element, such as accommodation, money, drugs or alcohol. Some may not, however. Many CSE cases involve complex dynamics between the victim and the perpetrator. Those may involve intangible exchange or rewards, such as protection or affection for the victim. Moreover, the current definition of "payment" does not reflect the policy definition in the regional 'Co-operating to Safeguard Children and Young People in Northern Ireland' guidance, in which the definition is that CSE occurs:

*"where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/ or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual."*

We want the Committee to consider the definition of "payment" especially as it relates to the potential inclusion of other inducements, for example, in order to ensure that it is in line with the regional guidance but also broad enough to capture the full range of CSE cases, some of which may not involve a tangible or financial reward. It may be an intangible reward, such as affection or protection, because of the nature of CSE. It is necessary to cover the inducement for sexual services that could be non-financial.

**Ms Canavan:** I will add to that. I caught up with our service manager for our regional service SEEN, which I mentioned at the start. I said that there is a question around the definition of "payment". I asked her, "Is that what you see with the young people whom you support who have been exploited?". She replied that, in the vast majority of cases, it is not tangible. Rather, it is the sense of belonging, it is affection and it is attention. It is those things that you cannot put your finger on. If we narrow the definition again, we are going to be leaving out the vast majority of CSE cases. That is the reality here in Northern Ireland. We need to make sure that our law reflects what is happening here, rather than keep it tight to reflect something that is imagined elsewhere.

**Mr Newton:** Chair, I presume that we have a copy of the Barnardo's report 'Not a world away'.

**The Chairperson (Mr Storey):** We can get that, yes.

**Ms Canavan:** Absolutely. I recommend reading that report, but I have to say that it is a really hard read. I read it again recently in preparation for this meeting, and it is not one that you can read easily. It will stay with you. It is the reality of what is happening here in Northern Ireland, however. It will horrify you.

I am really glad that you brought it up, because there is a quotation that I have included in our evidence that really captures the definition of payment. After all the cases that were being seen, and all the case studies, had been looked at, there came this comment in the report:

*"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."*

We need to make sure that our legislation reflects that. That report was published 10 years ago. We are now in 2021.

**Mr Newton:** I presume that you have raised that with the Department? Are both organisations on the same page on this?

**Ms Whelehan:** Yes.

**Ms Canavan:** Absolutely. It is something that is we have been saying for a long time, and probably prior to 2011, before I was with Barnardo's. It is something that we have been feeding back to the Department for years. It did its CSE law review back in 2019, and it is something that we raised then. We now need to get up to speed. We have this opportunity with the law to make sure that we get it right.

**Mr Newton:** When you raised it with the Department, what was its reaction on intangible rewards?

**Ms Canavan:** I did not have a discussion with the Department directly. I would really welcome a discussion with it on this. We have been raising it in our submissions to the Department and have been raising it publicly for a long time, and then it was not reflected in the Bill. That was disappointing. The Department had the evidence, and it had the opportunity. Perhaps it is an oversight, but I would welcome steps to amend the provision. Thank you so much for that, Robin.

**The Chairperson (Mr Storey):** We can ask questions of the Department about that.

**Mr Newton:** I would welcome that, Chair.

**Ms Canavan:** Thank you.

**Mr Weir:** I want to make just a couple of comments. As the Chair said, some of us will have a difference of opinion on the broad issue of reasonable chastisement, but I will leave that aside for the moment.

First, you make very valid points around the need to ensure that the definition of "payment" is inclusive enough so that it does not enable particular crimes to go unpunished because they do not fit into a very narrow definition. Secondly, on the motivational side of things, there is a very strong case for ensuring that that be widely enough drawn that there is not a loophole.

Two points occurred to me. There will be a need for a very interesting conversation with the PSNI on intention. We will want to make sure that, whatever is drawn up about intention, it does not simply become a device that results in too high a hurdle for prosecutions to take place successfully. There is a balance to be struck. It is normal in most criminal offences for intent— mens rea, in legal terms — to be there. It is therefore about trying to strike a balance on the level of intent.

You make a very valid point about abuse of trust. It should not be so narrowly defined that it falls outside the narrow remit of religious organisations or sporting organisations. I know that we will be looking to see with what the Department comes forward. The only little bit of nervousness that I have there is that we need to find a definition that is inclusive enough. This will be about the way in which that is framed. If we look at terminologies around hobbies or extracurricular activities, we need to

avoid creating a category that excludes other things. We need something that is widely enough drawn. It may well just be about whatever way in which that is expressed.

Rather than rely on guidance that would be amended from time to time, if we have something that is drawn widely enough to cover all the potential situations in which there is abuse of trust — I am not quite sure what the exact wording would be — and particularly situations in which adults are with children, it is more about the definition of that than about particular groups of categories. If we use groups of categories, there is a danger that people will make an argument in court that they do not fall precisely into a category and use that loophole. Will you respond to those comments?

**Ms Whelehan:** You make a good point about the definition of "position of trust". It is something that came up in the workshop discussions that we had with the Department. It is about how it is made as inclusive as possible, and there are other ways of doing it. Jersey's approach is more inclusive, because it does not specify settings. Interestingly, Sarah Champion's amendment, which, as I mentioned earlier, has been tabled in England to the Police, Crime, Sentencing and Courts Bill, is more inclusive, in that it removes references to the discrete statutory settings and extends the criminal sanction to all adults in a position of trust who are involved in caring for, training, supervising or being in sole charge of a child.

There are therefore ways in which that has been done, and there are lots of different options that could be considered for inclusivity, should the Committee be concerned that things would be left off the list, were we to include hobbies or extracurricular activities. It is just about choosing the right model.

**Mr Weir:** Yes.

**Ms Whelehan:** We are all agreed, however, that it needs to include all adults who are operating in a position of trust and all 16- and 17-year olds. The NSPCC would absolutely relish being part of that debate and having further discussions with the Committee. Once we see the text of the amendment, we would love to brief the Committee and have further conversations in order to try to arrive at something that we can all live with and feel is appropriately inclusive.

**The Chairperson (Mr Storey):** That OK, Peter?

**Mr Weir:** Yes.

**The Chairperson (Mr Storey):** There are no more questions. I thank Orla, Natalie and Trása for their attendance here today. Orla got off easy.

**Ms O'Hagan:** I did. That was enjoyable.

**Ms Whelehan:** She did all the work though.

**The Chairperson (Mr Storey):** You did all the work before you came, Orla. Is that right? Thank you.

**Mr Newton:** The brains behind the organisation.

**The Chairperson (Mr Storey):** This is not to pick out one organisation over another, because I would not do that, but I thank Barnardo's for the joy that it gives us with Farrah in the advert.

**Ms Canavan:** Yes. She is fantastic, is she not?

**The Chairperson (Mr Storey):** She brings joy into our home, when I am at home for supper. She brings a smile to all our faces.

**Ms Canavan:** We love her too.

**The Chairperson (Mr Storey):** She is a star.

**Ms Canavan:** She really is.

**The Chairperson (Mr Storey):** You can pass that on to her from us.

**Ms Canavan:** I absolutely will. Thank you so much.

**The Chairperson (Mr Storey):** Thank you to the NSPCC as well for all the work that it does.

**Ms Whelehan:** Thank you very much.

**The Chairperson (Mr Storey):** Thank you for your time today.