



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (Sexual Offences and Trafficking
Victims) Bill: Northern Ireland Commissioner
for Children and Young People

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 Bradley
Ms Jemma Dolan
Mr Robin Newton
Mr Peter Weir
Miss Rachel Woods

Witnesses:

Ms Koulla Yiasouma	Northern Ireland Commissioner for Children and Young People
Ms Jacqueline Melville	Office of the Northern Ireland Commissioner for Children and Young People

The Chairperson (Mr Storey): I welcome to the Committee the Northern Ireland Commissioner for Children and Young People (NICCY), Koulla Yiasouma. It is good to see you. I trust that you are keeping OK. We also have with us Jacqueline Melville, who is a policy research officer in the commissioner's office. We will go straight to your comments, and then Committee members can put their questions to you.

Ms Koulla Yiasouma (Northern Ireland Commissioner for Children and Young People): Thank you very much, Chair. It is great to be with you. This may be very repetitive, because Barnardo's and the NSPCC covered quite a lot of the issues, so, hopefully, this will be quite a quick session. I have a few opening remarks to make. As you rightly say, Jacqueline is here to answer on the detail. Like Orla in the previous session, she has done all the work. I also send apologies on behalf of our chief executive, who has not been able to join us today.

I thank the Committee for the opportunity to give evidence today on the Justice (Sexual Offences and Trafficking Victims) Bill and warmly welcome any legislation that seeks to better protect victims of sexual offences and trafficking. You already heard evidence of this from the NSPCC and Barnardo's, but I commend the departmental officials for their willingness to engage with my team on the Bill. They have been really helpful and cooperative.

You will be aware that the legislation that established my office requires us to have regard to all relevant provisions of the United Nations Convention on the Rights of the Child, and it is in that context that our written and oral evidence are based. Today's evidence is not intended to be comprehensive across all clauses in the Bill. Instead, it will address some key aspects that mostly directly engage children and young people's rights and best interests, which were highlighted in our written submission. It is unlikely that we will go into the same detail as Barnardo's and the NSPCC did.

The UN Committee on the Rights of the Child is instructive in reminding government that all children up to the age of 18 years are considered vulnerable, regardless of the age of sexual consent. It highlights a requirement that, although respecting children's developing autonomy, young people under 18 must be afforded robust safeguards. The Sexual Offences (Northern Ireland) Order 2008 did not provide adequate levels of protection for all children up to the age of 18 against all sexual offences, and we hope that the Bill that we are discussing today will rectify that situation.

Examples of our concerns in that area can be seen in clause 2, which, as you know, relates to grooming. Although we broadly welcome the intention of the clause, which includes adults masquerading as a child, about which you have talked at length, and communicating with a child or children with the intent to groom, protection from the offence should apply fully to all children under 18, not just those under 16. Moreover, the reasonable belief or rebuttal defence, whereby defendants are afforded access to a defence that they did not believe that a child was under a certain age, be it under 13 years or 16 years, should be amended, at least to reverse the burden of proof.

Another example is that, although we welcome the intention of the provisions in clause 3 regarding miscellaneous amendments to sexual offences that apply up to the age of 18, we again highlight concerns about the defence of reasonable belief and the need to address that in order to ensure that legal protections apply equally and evenly to all children up to 18.

Turning to other comments on the proposals — I am repeating what you have already heard, but it is worth repeating — we welcome the move in clause 3 to amend references to child prostitution and child pornography to better reflect the abuse and exploitation that is represented in those offences. Again, we support the call for the definition of payment to extend beyond tangible forms to non-tangible forms, and you have heard some excellent examples of that.

I am disappointed that the Bill, in clause 18 on sexual offences prevention orders (SOPOs), does not address wider concerns regarding the need to ensure that all children up to 18 years of age are afforded safeguards under abduction and recovery arrangements regardless of age, care or other status. As with other areas of the Bill, concerns have been repeatedly raised on that point, including by the 2014 independent inquiry into child sexual exploitation (CSE) and, more recently in 2020, by the Criminal Justice Inspection Northern Ireland and the Leonard report on the effectiveness of the Safeguarding Board's member agencies in responding to CSE.

In a separate point on how the provisions of the Bill engage with children under 18, NICCY notes that the Committee will wish to consider how children who display sexually harmful behaviour will be within the scope of clauses such as clause 1, which relates to voyeurism. As with all such provisions that may apply to children, it is of central importance that arrangements effectively address harmful or abusive behaviour whilst seeking to divert children from the criminal justice system and ensure that they have access to the proper supports, including therapeutic support, to ensure that such behaviour is not repeated.

Turning to the scope of the Bill, as stated in our written submission, while I welcome moves to enhance legislative safeguarding protections through the Bill, I am deeply disappointed that the intended scope of the planned miscellaneous justice Bill has not been brought forward, particularly in relation to children who are involved with the criminal justice system, and regret the lost opportunities to address those important issues within the current mandate. In relation to sexual offences and protections in law, NICCY also notes disappointment that all areas included in the Department's 2019 consultation on CSE and law reform are not being brought forward, including, as already highlighted, proposals regarding the defence of reasonable belief.

I now move on to the anticipated amendments and the lengthy discussions that you have just had on both the areas that I want to address. We welcome the commitment from the Minister to bring forward provision to extend the abuse of trust protections. In our 2019 advice to the Department, we expressed serious concern that the abuse of trust offences required amendment in order to offer effective protection to children and young people. Legislation must reflect contemporary configurations of how services to children are delivered by, and on behalf of, statutory and government agencies as well as voluntary, community, sporting, arts and faith-based organisations, and must demonstrate a clear understanding of the power dynamics of sexual abuse when it is perpetrated by a person who is in a position of trust, regardless of setting. As highlighted in our written submission to the Committee and our advice to the Department, there is clear evidence of the vulnerability of older children to exploitation and abuse in such settings. Again, you have had a lengthy discussion about that with representatives from the NSPCC and Barnardo's.

I ask the Committee to note that 18 November is the European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse. The theme this year is making the circle of trust truly safe for children, which is really relevant when we talk about abuse of trust.

My final comment on the scope of the Bill is to strongly recommend that, as part of the legislation seeks to improve public safety and better safeguard children and young people from harm, the Committee gives full consideration to ensuring that equal protection under the law for children from all forms of assault, including physical punishment, is addressed in the Bill. We draw attention to the repeated recommendation of the UN Committee on the Rights of the Child and highlight the well-established evidence base that demonstrates that physical punishment does not effectively manage challenging behaviour by children, can result in poor outcomes for them and can escalate into injurious abuse and maltreatment. There has been much progress in Northern Ireland in strengthening measures to protect children and others from many forms of harm, abuse and violence. The Bill represents an important opportunity to ensure that the significant gap in legal protection for children is addressed.

Thank you for the opportunity to make those opening remarks. Jacqueline will be very happy to respond to any comments or questions that you may have. Thank you.

The Chairperson (Mr Storey): Was that a diversion that was just made? That sounds like something I would do. *[Laughter.]* Thank you for your presentation and the information that you have provided us with. Your statutory role is a very important piece of the work of this legislature, and that is why you are considering this piece of legislation: it is within the remit of children. Apart from the reasonable punishment defence, which has no general consensus in Northern Ireland, what other issue is missing from the Bill that could be an opportunity to protect children? Is there anything else?

Ms Yiasouma: I will go back to whether there is a consensus in Northern Ireland for the physical punishment of children. I think that there is consensus. We did a significant piece of work in 2017, which showed that parents were generally very supportive of a change in the law and would have found that helpful. I challenge the assumption that there is no consensus in Northern Ireland. The adults and young people that I have spoken to in Northern Ireland are up for that conversation and debate. I look forward to that happening.

We have already talked about the abuse of trust and extending that. If we are talking about specific sexual offences, the scope of the Bill needs to look at how it protects 16- and 17-year-olds. Earlier, I referred to the need for reform of bail and remand for children and young people in the criminal justice system. The reform of considerations around the minimum age of criminal responsibility also needs to be discussed and progressed. I have already spoken to the Committee about a range of other youth justice reforms that could have been addressed in a miscellaneous justice Bill. However, that opportunity has been lost.

Ms S Bradley: Thank you, Koulla. It is good to see you and Jacqueline. Thank you for your presentation. I seek your advice, Koulla. As a Committee, we want to be quite robust and get a really worthy piece of legislation that will have the effect that it sets out to have. For example, we have talked about the burden of proof and intent in clauses 1 and 2. It has always been at the back of my mind, on every piece of legislation that the Committee has worked on, that the age of criminality in Northern Ireland is where it is. It almost fails, because I think that there is also the right of the child not to be mature and have learned all of life's lessons. Can you still hear me?

The Chairperson (Mr Storey): Yes.

Ms Yiasouma: Yes.

Ms S Bradley: We could almost be setting up legislative entrapment for a new world. We know that young people have access to phones, and that has become a very normal thing, yet there is this legislation, and rightly so — I support all the arguments for it — around upskirting and downblousing, for example. We are relying on the relationships and sexuality education (RSE) programme — I will never tire of talking about the need for it — because, if we have these things on the statute books, we owe it to children to have them well educated on what normal behaviour is and is not. Do you share those concerns? Other than the RSE programme, which is almost something that happens after the legislation is put in place, is there another way for us to safeguard young people?

Ms Yiasouma: You are absolutely right. It is right to say that a good RSE programme that talks about consent and impact is the best preventative tool that we have available to us. Let us set aside that and let us set aside the fact that we have not got a reasonable age of criminal responsibility, which should be nearer to 16 than the current 10. Raising the age of criminal responsibility does not remove working on or challenging a child's behaviour. It just removes the need for a criminal justice response. It supports the child in order for them to understand what they have done wrong and to undertake any interventions or supports, particularly therapeutic ones, to ensure that they do not behave like that. That is one of the things that we are really keen on.

We cannot deny a child, or anyone who has been victimised by a child, the right to be recognised as a victim of a sexual crime. We cannot take that away from them, but, particularly when it is a child, we must work with them in the way that is most effective, because they are a child and because we see the possibilities. That is often by diverting them from the criminal justice system, as we do with a lot of children who have undertaken sexually harmful behaviours, because we have really good therapeutic interventions both within and outside the statutory criminal justice system. That is the way that we would go. We would divert them from the system, where appropriate. You are quite right: as we increase offences without having good RSE and early intervention and prevention, we increase the likelihood of bringing children and young people into the criminal justice system and of them having a criminal record that says that they are a sex offender. That will stay with them for the rest of their lives. We need to prevent that where at all possible, unless they continue to pose a significant risk to others.

We need to embed programmes and supports that ensure that children who perpetrate such acts do not do it any more and, where possible, avoid the criminal justice system. As this session is being reported by Hansard, I will not miss the opportunity to say that I still want to see the age of criminal responsibility raised significantly from where it is now.

Ms S Bradley: Thank you, Koulla. I appreciate that. I also want to let you know that I hear you when you talk about what is not in the Bill and those opportunities. I think that a lot of us hoped that the breadth would have been there to take in the likes of that point and many others. The safeguarding piece is a missing link in a lot of the legislation that we are doing at the moment. From your written submission, I know that you and Jacqueline appear to be very much aligned with the earlier submissions.

Ms Yiasouma: Absolutely.

Ms S Bradley: I will not rehearse those again, but I genuinely appreciate your submission. Thank you, Koulla.

Ms Dolan: Thank you, Koulla and Jacqueline, for presenting to us today and for your written submission. I found it very useful. I just want more information or a wee bit of clarity around the recommendation to expand clause 2 to include "enticing". I am sorry if this is a stupid question, but what does that actually mean, and what real-life impact could that have?

Ms Yiasouma: I will hand over to Jacqueline, because we are getting technical. That is Jacqueline's job.

Ms Jacqueline Melville (Office of the Northern Ireland Commissioner for Children and Young People): Can you hear me OK?

Ms Dolan: Yes.

Ms Melville: Thank you very much for your question. The issue of enticing was raised in 2014 through the independent inquiry into CSE in Northern Ireland. That was one of the recommendations. It has been an area that has been raised operationally by the police. In many ways, arguably — we have talked through some of the detail in recent conversations with the Department — the previous amendments around grooming and the proposals in the Bill seek to close that gap. They seek to put in place legislative measures and tools that can be used at the early intervention point.

What we say about clause 2 — it is one of the core themes of Koulla's presentation and our submission — is that we ask the Committee to look at how the provisions of all clauses of the Bill protect children and young people up to the age of 18, not the age of 16, and not depending on what their care status is or getting confused about whether they fall into the category where a defence of

reasonable belief could be engaged in relation to prosecution, but as a fundamental principle in our safeguarding legislation. Coming towards the end of 2021 and moving into 2022, are we working on the basis that those legislative protections will be afforded evenly to all children up to the age of 18? That was raised directly by the United Nations Committee on the Rights of the Child in 2014 and 2016 in respect of the Sexual Offences (Northern Ireland) Order 2008. It has also directly raised concerns about the defence of reasonable belief, which was also raised in the 2014 inquiry into CSE that I mentioned.

I am mindful of the Committee's earlier discussions with witnesses about how things will work in practice and what they will mean operationally. All of us are focused on that. Will the Bill improve safeguarding outcomes for children? Will it improve outcomes around pursuit and prosecution of those who seek to harm, exploit and abuse them? Operationally, that was raised last year by Criminal Justice Inspection Northern Ireland in its inspection of the criminal justice system response to CSE and by the independent evaluation of the response to CSE of Safeguarding Board for Northern Ireland member agencies. I hope that that is a helpful answer.

Ms Dolan: Yes, Jacqueline, that is helpful. Thank you. You have actually answered my second question, so, you will be glad to know, you are free. That is all my questions.

Miss Woods: You are definitely not free. *[Laughter.]* I will start off with a comment rather than a question, Koulla and Jacqueline. Thank you for your detailed submission. Equal protection will continue to come up, as it has done previously, and I see a wider debate on it in Committee if not in the Chamber. There is a very big missed opportunity in the Bill, and the same comment applies to the minimum age of criminal responsibility. It is one of those ones that we will keep plugging away at.

I have three questions, the first of which is a technical one about clause 18. Issues have been raised about SOPOs and safeguards. What more needs to be done in the Bill to cover abduction and recovery arrangements? Can you go into a wee bit more detail on that, please? Would having it in the Bill be an option, or does it require regulatory change or change of practice or policy?

Ms Yiasouma: We have said that those orders should be extended to 18-year-olds across the board, not just those who have been in care. That should clearly be included in the Bill. Again, I will hand over to Jacqueline for the detail on the remainder of your question.

Ms Melville: It is a very important question, and this is where the connections of the Bill to parent legislation are important. It is about linking to the provisions of article 68 of the Children (Northern Ireland) Order 1985 and to the Child Abduction (Northern Ireland) Order 1985. It is, as Koulla has just said, about ensuring that a clearly defined mechanism is in place. This legislation provides an opportunity to make sure that all young people are protected. From discussions with the Department, we know that it is not looking further at this. From our perspective, it would be helpful if the Committee took the view that it would like to explore this further with the Department. I should say that we are aware that there are areas on which officials are continuing to work, such as the defence of reasonable belief. There may be some of the questions, areas and issues that are raised in the discussion where we just want to acknowledge that the Department is continuing to work, and then areas where we have concern that there is not that momentum.

Miss Woods: Thank you, Jacqueline. Has the Department given you a reason why it is not looking at that area?

Ms Melville: It was not part of the intention of the piece to look at widening scope further.

Miss Woods: OK. Thank you. I have two more questions in relation to what is not in the Bill. The Bill is a trimmed-down version of what it should have been and what the Committee was promised last year. One thing that has been briefly mentioned is the legislation governing bail and remand for children, to strengthen the automatic presumption of bail and to introduce specific conditions to be met before a child can be remanded in custody. The Chair raised this issue. Why is that so important? What would be the effect of not having it in the Bill, and would you welcome its being added, through an amendment if possible?

Ms Yiasouma: Although we do not have high numbers of children in custody, something like 94% of children who were in custody in the past year were there on bail or remand, often for the lack of being able to perfect bail — to get an address or, mainly, accommodation. That cannot be right. Locking a

child up — that is what we are doing — has to be a course of last resort, and only where a child has committed such a serious offence that they are likely to get a lengthy custodial sentence or they pose a significant risk, and the two things are aligned. Yet we lock children up in our custodial facility for reasons other than their offending. That is a breach of decency, let alone children's rights, but also of the law. That is not because the Youth Justice Agency says, "Come on in, we'll look after you". It is because there are insufficient services in the community for those children and young people. However, that is not the issue for the criminal justice system to resolve.

We need to close that loophole in the bail arrangements to say that the juvenile justice centre cannot be used as a place of safety and that children should only ever be remanded into custody if their offences are so serious that they would get, as I said, a lengthy custodial sentence. We need that as a matter of urgency. For years and years, our custodial facility has been ill-used and badly used to accommodate children who are vulnerable and do not have suitable accommodation in the community, and that is not right. That is why we have needed law reform. The Law Commission reported on this about 10 years ago, and we are still sitting here 10 years later. Also, 10 years after the youth justice review made those recommendations, here we still sit without the legislation having been updated and those loopholes closed.

Miss Woods: Thank you, Koulla. It is important, then, for the Committee, and also the Health Committee, to be considering this when the Departments are moving forward with the changes to youth justice and the joint campus. This is completely interlinked, so we cannot be doing one without the other.

Ms Yiasouma: Absolutely.

Miss Woods: Finally, and similarly to the previous question about what is not in the Bill, absent from the Bill are provisions that would have addressed the 2019 Supreme Court judgement on the disclosure of non-court disposals for under-18s. Will you tell us more about that and whether you would encourage the Committee to look at that for the Bill?

Ms Yiasouma: Another recommendation of the youth justice review was wiping a child's slate clean — the importance of a child going into adulthood without carrying the burden of their previous offences, and being allowed to put their past behind them. We know that, generally, children grow out of offending. We know also the importance of employment in desistance from offending and the wariness of employers to employ somebody with a criminal record. There remains a lost opportunity to help children to wipe the slate clean.

My understanding is that Access NI is being a little bit more circumspect about not sharing non-court disposals. They should not do that. We should stop sharing criminal justice outcomes of children as they become adults, unless the behaviour continues into adulthood and they continue to present a risk. We should allow children to wipe the slate clean so that they can move on with their lives.

I am not sure whether that is what you were referring to, Rachel, because I cannot pull the judgement down into my mind. I am showing my ignorance.

Miss Woods: You are grand. Thank you. That is all from me.

The Chairperson (Mr Storey): I just want to check that no other members have any questions.

Ms Yiasouma: Peter Weir is waving his hand, Chair. I am not sure whether he is saying hello or he wants to ask a question.

The Chairperson (Mr Storey): I think that he is going to ask a question. Thanks. *[Pause.]* You are muted, Peter.

Mr Weir: I suppose that you could say that it is both. There is a slight degree of irony at the moment in that, geographically, Koulla and I are probably closer to each other than either of us is to Stormont.

Ms Yiasouma: Jacqueline is the same. The three of us could probably go out on to the street and have a conversation right now.

Mr Weir: I am tempted to say that I could even have brought my Manchester United mug with me so that you could feel fully at home. *[Laughter.]*

Ms Yiasouma: Well, I am sorry for your troubles, Peter. *[Laughter.]*

Mr Weir: Indeed. Given that there is considerable overlap between the NSPCC, Barnardo's and yourselves in the issues covered in your detailed evidence, I will try to confine myself to one particular issue, rather than trying to go over a range of things.

In relation to clauses 2 and 3, you raised the very important issue of burden of proof on reasonable belief. If I have correctly interpreted what has been presented both in writing and orally, I concur with your concern to ensure that there is no reversal of that burden of proof. That is to say that, if someone is going to rely on the defence of reasonable belief, the onus is on the alleged perpetrator to prove that and to discharge the burden of proof, rather than the prosecution having to prove that itself. I think that that will be an issue. You effectively recommended that the Committee seek clarification and reassurance that the Department is not seeking to reverse that burden of proof. I think that the Committee will want to ask about that. Is that simply a bit of a belt and braces exercise from you to ensure that that does not happen, or is there anything that would lead you to believe that the Department will potentially reverse that burden of proof?

I think that it was Jacqueline who mentioned that there are ongoing discussions with the Department. Have you had any direct clarity from departmental officials in relation to that, albeit we would want to put that clarity on record, if officials were to give assurances?

Ms Yiasouma: Jacqueline?

Ms Melville: Thank you very much for that question. The Department looked at that issue in quite a lot of detail, across a number of areas relating to CSE and sexual offences, in its 2019 consultation on law reform. In the consultation, it proposed not just reversing the burden of proof, which is a direct recommendation of the UN Committee on the Rights of the Child, but looking at the potential to limit the circumstances in which the defence could be accessed.

We were supportive of both aspects of the proposals. We appreciate that some complexities have arisen in discussions that they had with other members of the criminal justice family, but we are aware that they continue to work on that. Our understanding is that they hope that something could, potentially, be introduced in the early stages of the next mandate. Of course, you will be aware of and appreciate our concerns about that not happening in this mandate, as well as our concerns that we do not know what might happen as we move out of this mandate. You will also know that we are disappointed that the opportunity has not been taken to secure that.

Mr Weir: Obviously, there is the issue of where the burden of proof should lie. Can you expand on that, because I do not think that it has been discussed in particular detail in the submission so far? You mentioned earlier consideration of the limitations within which the defence could be used in a more limited set of circumstances. Can you expand on that a little with regard to where you would see the limitations being placed on that as a defence, and, again, whether that is something that could potentially be in the Bill?

Ms Melville: Yes. I will reach, seamlessly, for my piece of paper. That was really building on the Department's looking at arrangements that were being taken forward in Scotland. We were supportive of its seeking to look further at that. If I am not able to find that quickly in my notes —

Mr Weir: Jacqueline —

Ms Melville: Examples include limiting access to the defence if an individual had a previous conviction for a sexual offence against a child, had been made subject to a risk of sexual harm order or had been charged with a relevant sexual offence,

Mr Weir: That is useful. I suggest that you could provide that to us in writing. That would be helpful as well.

Ms Yiasouma: We will do that, yes; absolutely.

Mr Weir: Thank you.

The Chairperson (Mr Storey): Koulla and Jacqueline, thank you very much for your time, submission and continued work with the Committee. We wish you well. No doubt, we will return to many of those issues over the next weeks and months — if there are months; I do not know. We will see where the next few weeks lead us. Hopefully, we will be in a position for the Bill to be presented to the Assembly. Thank you for your time. I wish you well for the rest of the evening.

Ms Melville: Thank you.

Ms Yiasouma: Thank you very much, Chair. We look forward to engaging with you over the next few months and into next year.

The Chairperson (Mr Storey): Thank you. Bye.