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Dear Sirs

### **Consultation on ‘The Witness Charter – A Charter for Witnesses of Crime’**

I write in relation to the above consultation.

As you may be aware, the office of the Northern Ireland Commissioner for Children and Young People (NICCY) was established under the Commissioner for Children and Young People (Northern Ireland) Order 2003. The principal aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people. Under Articles 7(2) and (3) of the Order, NICCY has a duty to keep under review the adequacy and effectiveness of law, practice and services relating to rights and welfare of children and young people. As such this advice is limited to the proposals contained within the consultation which will impact upon children and young people as witnesses and where it is appropriate for NICCY to comment.

I welcome this consultation on the draft Witness Charter. In finalising the Charter, I would remind the Department of their responsibilities under the United Nations Convention on the Rights of the Child (UNCRC) in respect of child witnesses. Of particular relevance to this consultation are:

- Article 2 – Rights without discrimination:  
*“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.”*
- Article 3 – Best interests of the child:  
*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

- Article 4 – Protection of rights:  
*“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”*
- Article 12 – Respect for the views of the child:  
*“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.  
For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”*
- Article 16 – Right to privacy:  
*“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.”*
- Article 19 – Protection from all forms of violence:  
*“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.”*
- Article 23 – Rights of children with a disability:  
*“States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life... States Parties recognize the right of the disabled child to special care.”*

Turning to the substance of the Charter, I welcome the Department’s commitment to improving the journey of a witness through the justice system and commend the Department on the work that has gone into developing this Charter.

I was pleased to note the assurance contained at the outset of the Charter that it is for all witnesses of crime – both for the prosecution and the defence. However, given that the Charter asserts that it sets out the standards of care and entitlements a witness can expect, I am concerned at the disparity of services offered to the two categories of witnesses.

Under the Witness Charter, prosecution witnesses are entitled to a needs assessment undertaken by the PSNI and the Victim and Witness Care Unit to identify the witness’ needs and any necessary support or special measures required to assist them in giving evidence. They will then have access to / referral to a support service provider while the prosecution can make an application for special measures based on the outcome of the needs assessment. For a defence witness, no such assessment will take place. Rather it is left to the untrained defence representative to identify any mental health issues, learning or communication

difficulties, whether the witness has been intimidated or is at risk of intimidation and any other needs which may require additional support. Furthermore, it does not appear that a defence witnesses with such needs can avail of the same support as a prosecution witness.

I am pleased that children who give evidence for the prosecution will have an assessment undertaken by trained professionals. However, I am deeply concerned that children who are witnesses for the defence have no entitlement to an assessment and further than any assessment undertaken is not done so by a trained professional. I have not seen anything in the draft Charter which demonstrates that any consideration has been given to the training needs of defence practitioners in this regard. I would respectfully suggest that they are not equipped to identify vulnerabilities in children and young people which may not be apparent or obvious. I would be curious to know if this issue has been explored, what engagement has taken place between the Department and the Law Society to make them aware of the Charter, their proposed responsibilities and the rights and entitlements of child defence witnesses.

I would have hoped that the development of the Witness Charter would have provided an opportunity to push for the fulfilment of the second aspect of Recommendation 5 of the Youth Justice Review (2011), namely that *“all professionals working in the youth justice system, including defence solicitors, should receive appropriate training to reflect the new aim.”* It is with disappointment I note that this has not been the case. I consider it vital that all practitioners who may engage with children and young people are appropriately trained and would once again urge the Department to engage with the profession to introduce a CPD requirement in this regard. The need for this is now even greater to ensure equality in the services and supports available to all child witnesses.

It is my view that defence practitioners should be appropriately trained and supported to identify any additional vulnerabilities a child witness may have. This should be done through compulsory CPD training. If the defence practitioner feels there may be an additional vulnerability, they should then be able to refer the child for a professional assessment the outcome of which will be a referral for appropriate support services.

I note another disparity in the supports offered to different categories of witnesses in that prosecution witnesses can also avail of separate entrances and waiting areas while defence witnesses cannot. Child witnesses, whether prosecution or defence, are inherently vulnerable as a result of their age. It is highly probable that they will be frightened and overwhelmed at the prospect of attending court and also fearful of any engagement with the other party, be that the defendant or alleged victim. As such, I am disappointed that the protections available to prosecution witnesses in this regard are not extended to child defence witnesses.

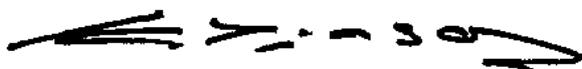
Prosecution witnesses can also have their expenses paid for them. This does not appear to be the case for defence witnesses. Obviously the cost of attending court is a significant factor for child witnesses and the payment of such costs should be equally available to all children who attend in order to give evidence.

I would wish to be clear that I understand different forms of support may be required for prosecution witnesses, particularly where they were the victim in the matter, than those necessary for defence witnesses. However, I feel that those currently available for child defence witnesses, particularly where there are additional vulnerabilities, could be improved.

Turning to my final point, I was very pleased to see that a young person's guide to the Charter has been drafted and further that this has been developed with the NSPCC Young Witness Service and their participation group. A young person's guide to the Charter is an essential tool in assisting children and young people to understand their rights and entitlements and to have these realised. I was therefore profoundly disappointed to realise that this guide is only available for children and young people who give evidence for the prosecution. As outlined above, I have very real concerns about the disparity in the rights and entitlements of young people as prosecution and defence witnesses. I understand the reason the guide has been limited to prosecution witnesses is because the focus of the NSPCC Young Witness Service is prosecution victims and witnesses. However, I feel that this rationale only emphasises the need to address the inequality in the services provided to child prosecution and child defence witnesses. I do not consider it acceptable to have a young person's guide explaining their rights and entitlements which is only available to one category of child witness. The draft young person's guide must be amended and made available to both prosecution and defence witnesses.

In conclusion, I welcome the draft Charter and the work that has been undertaken to protect and enhance the rights of witnesses. However, as detailed above I am disappointed that the Department, in conducting the examination of a witness' experience when developing this Charter, did not take the opportunity to address the imbalance in the rights and entitlements offered to different categories of witnesses. I am deeply troubled by the lack of a young person's guide to the Charter for defence witnesses and urge the Department to rectify this before progressing with the Witness Charter.

Yours sincerely



Koulla Yiasouma  
**Commissioner**