Time for Change: Advice on arrangements to deliver justice in cases of sexual offences against children

13 February 2020

*“Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known they cannot be kept waiting any longer for the protection to which they have an unqualified right.” (2006 UN Study on Violence against Children)*

Key recommendation and summary

The Commissioner for Children and Young People recommends that the Barnahus or Child House model is introduced in Northern Ireland in cases of sexual offences against children under 18 years.

In Northern Ireland the majority of reported sexual offences continue to be committed against children,[[1]](#footnote-1) while research tells us both that under-reporting of child sexual abuse remains a key concern[[2]](#footnote-2) and that high attrition and low conviction rates for offences which are reported are a persistent feature of our justice system.[[3]](#footnote-3) Compelling concern regarding the treatment and re-traumatisation of child victims due to the current operation of justice arrangements has also been repeatedly highlighted.

Sir John Gillen in his 2019 Review into the law and procedures in serious sexual offences in Northern Ireland noted profound concern regarding the average 986 days (between two and half and three years of a child’s life) for cases involving child victims to reach completion.[[4]](#footnote-4) In addition to the issue of delay, the Review documented a range of concerns about criminal justice proceedings in relation to cases involving children including: lack of a consistent application of special measures; location of live links within court buildings; failure to introduce pre-recorded cross-examination; lack of contact between prosecutor, barristers and children prior to court appearances; length of time children were required to be in court and repeated delays and re-listings of cases; and the length, nature and tone of cross-examination of children which did not reflect their status as vulnerable witnesses often subject to trauma. NICCY notes that concerns relating to the treatment of child victims of sexual offences by the criminal justice system have been previously highlighted in the Independent Inquiry into Child Sexual Exploitation[[5]](#footnote-5) and that its recommendations were reiterated in Sir John Gillen’s Review.

No child or young person should be subjected to sexual violence or abuse and government, statutory agencies and others must all do everything we can to prevent abuse. In circumstances where abuse is reported the criminal justice system must as a minimum ensure, within the principles of transparency, fairness and due process, that reporting, investigation and court processes enable children to give their best evidence, do not cause or exacerbate their trauma or distress and deliver a high quality of justice for all involved. As Commissioner for Children and Young People, I am of the view that current arrangements and practices in Northern Ireland do not meet this threshold for child victims of sexual offences. It is time for change.

Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on these matters.

The Commissioner’s remit includes children and young people from birth up to 18 years, or 21 years, if the young person is disabled or is care experienced. In carrying out her functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY warmly welcomes opportunities to engage with the Lord Chief Justice and others in considering how all aspects of the justice system can more effectively deliver justice in sexual offences cases involving child victims and witnesses.

Children’s Rights

The United Nations Convention on the Rights of the Child (UNCRC) sets out minimum standards for children’s rights across all areas of their lives such as, civil and personal protection, health, education, welfare. The four guiding principles which flow through the Convention are: children’s right to non-discrimination; right to survival and development to the highest level; to their best interests being a primary consideration; and to their voice being heard in all matters affecting them.

The Convention also highlights that as rights-holders children have special rights to protection from abuse, exploitation and trafficking and to be supported in their recovery from abuse. The State party has an obligation to ensure that appropriate measures and procedures, including court and judicial processes, are in place to realise these rights. The Convention also affords particular rights to any child in contact with the criminal justice system, including child defendants. The rights of the Convention are interdependent and indivisible – like children’s lives they cannot be compartmentalised.

In 2016, following examination of the UK and devolved governments, the UN Committee on the Rights of the Child stated that in Northern Ireland the recommendations of the 2014 Independent Inquiry into Child Sexual Exploitation (CSE) must be implemented and that, across the UK, the capacity of law enforcement bodies and the judiciary to detect and prosecute sexual abuse and exploitation cases and to grant effective remedies to victims should be strengthened. The Committee also expressed serious concern about child victims and witnesses attending court in person for cross-examination and recommended that video recorded interviews with children be used as evidence during trial.[[6]](#footnote-6)

In providing advice to State parties on the obligation to take a child rights approach to protection from violence the Committee on the Rights of the Child highlights that this means “representing and promoting the human dignity and physical and psychological integrity of each child and recognising they are rights bearing individuals rather than perceiving them primarily as ‘victims’”.[[7]](#footnote-7) The Committee note that this includes treating children in a sensitive manner throughout the justice process taking into account their personal situations, needs, age, gender, disability and level of maturity and they are unambiguous in stating that “extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation”.[[8]](#footnote-8)

In addition to UNCRC obligations held by the UK Government and devolved administrations, in 2018 the UK Government ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention).[[9]](#footnote-9) The Lanzarote Convention, which takes account of the UNCRC, under article 30 requires that signatories: take all necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child; that a protective approach towards victims is adopted; that investigations and criminal proceedings do not aggravate the trauma experienced by the child; that the criminal justice response is followed by assistance where appropriate and; importantly, that investigations and proceedings involving children are treated as a priority and carried out without any unjustified delay.

Further to this, article 35 in regard to interviews with a child requires that all measures are in place to ensure that these: are undertaken without unjustified delay; occur in premises designated or adapted for this purpose with professionals trained for this purpose; limit the number of interviews; ensure children are accompanied by legal representative or adult of their choice; and that interviews are videotaped and this is accepted as evidence. The Lanzarote Convention is clear that measures taken to meet these obligations are not prejudicial to and must, of course, take account of the rights of the defence or to the requirements of a fair and impartial trial.

NICCY remains mindful of the particular nature of sexual offences against children whereby there is often a lack of physical or other evidence or witnesses and that this places very significant weight on the quality and credibility of the account of the child victim. The child’s testimony is often critical to the evidence which will be used to determine prosecutorial decisions and the innocence or guilt of a defendant and it is therefore imperative that the best quality of evidence should be secured. The dynamics of providing evidence in investigative interview and cross-examination led by adults in positions of authority is unlikely to have been experienced by the child before. Where their testimony relates to sexual violence it must be remembered that such offences are recognised as inducing fear, shame and guilt on the part of the victim alongside a concern they will not be believed or protected from the abuser and NICCY notes that criminal justice processes must have full regard to these factors and seek to mitigate the impact they may have on a child’s evidence.

It is within this context that the recent commitment of the UK and devolved administrations to the Lanzarote Convention provides further affirmation of the weighty obligations placed on our child protection and criminal justice processes in respect of to the treatment of child victims in such cases. This provides a new impetus to critically reflect on whether the law, procedures, arrangements and practice of the justice system in Northern Ireland fulfils the obligations to take account of children’s rights and to ensure just outcomes are achieved for all involved.

Barnahus and the development of a new approach

NICCY draws particular attention to the development and adaption of the Barnahus or Child House model which was pioneered in Iceland in 1998 and is now operating in a wide range of countries across Europe.[[10]](#footnote-10) Barnahus is promoted by the Council of Europe as a model of best practice and has been identified by the Lanzarote Committee as supporting implementation of the Lanzarote Convention obligations.[[11]](#footnote-11) NICCY recommended that Sir John Gillen consider the model in undertaking his Review.[[12]](#footnote-12) In nearby jurisdictions, The Lighthouse London in England and Barnahus, OneHouse Galway in Ireland are both currently in a pilot phase of services that draw on Barnahus and there is strong commitment progressing Barnahus in Scotland.

The Barnahus model, as established in Iceland, essentially seeks to ensure a child centred response to victims of child sexual abuse by providing child protection, medical, therapeutic (including family support) and justice processes within a single child friendly location. The approach ensures that legal, social care and medical professionals work collectively and aims to provide a comprehensive service for children in one setting at both the immediate point of disclosure or reporting and over the longer term.[[13]](#footnote-13) Barnahus is understood to be a neutral institution which promotes the best interests of the child without compromising other interests, without pre-empting conclusions about the role or guilt of the defendant and without advocating for one party in investigations and proceedings.[[14]](#footnote-14) While the model draws on the Child Advocacy Centres developed in the USA it is the co-ordination of child protection processes with criminal justice proceedings that is unique and central to Barnahus.[[15]](#footnote-15)

In Iceland and a number of other jurisdictions, the model involves an exploratory interview with the child to identify child protection, therapeutic and justice requirements and, where a legal pathway is being progressed, professionals trained in forensic interviewing conduct an investigative interview with the child. This follows any alleged perpetrator being taken into custody and a range of professionals including defence advocates, police, child protection services, prosecution and a judge observe the interview via video link and communicate with the interviewer to clarify any matters raised or to ask any additional questions. Prior to this, the interviewer engages with parties to the case in preparation for presenting the questions of all parties in a neutral and non-leading manner that is appropriate to the emotional, cognitive and linguistic needs of the child. This interview provides the child’s testimony in court and further interviews are generally not required as all relevant parties have been involved in the proceedings which are designed to operate within the particular jurisdiction’s requirements of due process and fair trial.[[16]](#footnote-16)

The model aims to ensure minimal time lapse between exploratory and investigative interview and between investigative interview and trial. This supports child victim’s participation in criminal justice proceedings ending at an early stage and enables them to access therapeutic support in a timely manner and without concern that further justice interviews or examinations will be required.

It has been highlighted that where arrangements in relation to interviews for the purposes of child protection and for justice proceedings do not operate in cooperation with one another this can negatively impact on both processes. For example, multiple interviews undertaken with different professionals, perhaps over a period of years, can re-traumatise the child affecting their physical and mental health and repeated interviews with significant delays between initial and other interviews may place at risk the reliability of their account.[[17]](#footnote-17) In considering this final point we again draw attention to the Gillen Review findings which set out that cases involving sexual offences against children were subject to the longest delays in Northern Ireland.

In Iceland, a significant increase in investigation and prosecution rates for sexual offences has been attributed to implementation of the approach:

*“From the onset of Barnahus twice as many cases of suspected sexual abuse have been investigated, the number of cases prosecuted has tripled and the same applies to the number of sentences passed on a yearly basis. This I believe is largely due to the fact that the evidential quality of children’s disclosure has significantly improved.”*

Bragi Guobrandsson, former General Director, The Government Agency for Child Protection, Iceland and member of the United Nations Committee on the Rights of the Child.[[18]](#footnote-18)

The development of Barnahus and its adoption and adaption across such a range of countries operating within different legal and child protection frameworks has been associated with both a growing awareness of the prevalence of sexual offences against children and a better understanding of the re-traumatisation child victims can be subject to due to their involvement in criminal justice proceedings.[[19]](#footnote-19) In short, Barnahus can be understood as a response that, rather than expecting a child victim of abuse to adapt to existing procedures and practices, has recognised where those procedures were not effective in allowing the child to give their best evidence (and consequently did not support robust prosecutorial decision making or provide quality testimony for effective trial proceedings) and accordingly adjusted arrangements, in line with child rights standards.

We highlight that European Barnahus Quality Standards have now been developed and supported progression of the approach across a wide range of jurisdictions as has the Compendium of Law and Guidance on European and international instruments concerning child victims and witness of violence.[[20]](#footnote-20)

Application of the Barnahus Model

In reflecting on the development of Barnahus in different jurisdictions the wide variety of approaches to the model is evident. For instance, we note that some countries have introduced the model on a permanent basis while others have initially established pilots and while some jurisdictions, including Denmark, have placed Barnahus on a statutory footing in others, including Iceland, this was not the case. Following on from this, arrangements for Barnahus may be underpinned by policy and procedure or set out in national strategy with the latter being the current the position in Cyprus.

Barnahus and comparable approaches, such as Multi-Disciplinary Centres in the Netherlands, have been structured according to the needs of each jurisdiction and can be hosted or led by different agencies. For example in Iceland the child protection agency established and leads Barnahus, in Norway the police lead (with the Ministry of Justice holding responsibility in a cross departmental approach involving the Minister for Children and Social Equality and the Minister for Health) while in Croatia the Ministry of Health established the approach in partnership with a city government. Jurisdictions have also been flexible in designing Barnahus to meet the geographic and other needs of their jurisdictions and so while Iceland operates a single Barnahus (currently under review) Norway has now developed over 10 centres.

Barnahus can be clearly designed or aligned to criminal justice investigation and proceedings while some similar models are not embedded in justice procedures.[[21]](#footnote-21) Indeed, in Iceland there was no established formal link between the judiciary and the Barnahus model and this developed over time. On this last point, NICCY notes that a number of jurisdictions have established a Barnahus approach with a commitment to addressing better coordination and cooperation with legal proceedings as the model is more fully adopted.

It is also noteworthy that in some jurisdictions Barnahus is accessible to a wider range of children, for instance, this includes children in Iceland who are victims of physical or domestic abuse and separated children subject to immigration control and in Sweden to child victims or witnesses of physical violence in close relationships and honour related violence.

**Key considerations for Northern Ireland**

As noted above, a key strength of the Barnahus approach is its inherent responsiveness to different national, regional and local environments. In visiting The Lighthouse service in London along with the other UK Children’s Commissioners the child centred nature of the services provided and the collaboration across different agencies, most notably social care, psychology and police, in delivering this was striking. The importance of accessing services that children and families felt to be seamless, sensitive and trauma informed at a deeply distressing point in their lives was given powerful testimony by a group of parents who wished to share their experiences with us. This sits in contrast to other arrangements in which children and families are required to attend multiple services at multiple locations to be seen by multiple professionals. As The Lighthouse continues in its pilot phase we will watch with interest as the impact of the project continues to be evaluated,[[22]](#footnote-22) paying particular attention to the piloting of psychology-led interviews and developments which may enable The Lighthouse to act as a remote site in relation to special measures applications and in regard to pre-recorded cross examination as this is continues to be rolled out across England.

However, in Northern Ireland **NICCY is firmly of the view that the introduction of Barnahus must be embedded in the full breadth of criminal justice proceedings.** This must include: establishing a formal link with justice system; ensuring that children’s best evidence can be given through interviews which are pre-recorded and undertaken in a timely manner at both investigative and cross examination stages; and ensuring that justice proceedings can then continue without a need to further cross examine child victims or require their attendance at court. The introduction of an approach which does not fully reflect this should be understood as a transitional development only. As highlighted previously, Northern Ireland must ensure that measures for child victims are developed and operate in accordance with the obligations of the UNCRC and the Lanzarote Convention and this must address interview, cross-examination and trial proceedings.

We acknowledge that the adoption of Barnahus will need to take account of a range of factors, including ensuring that evidential and public interest tests are met to inform prosecutorial and charging decisions, and we note that this may include consideration of further developing the Barnahus investigative interview stage. We note with interest developments in Norway whereby following pre-recorded cross examination the defence advocate has a limited period of time to review the testimony and seek any further clarifications which are then addressed with the child being interviewed by the same professional in the same setting as in earlier interviews.

In hosting a visit to Northern Ireland by Bragi Guðbrandsson, the founder of Barnahus and Member of the UN Committee on the Rights of the Child, it was notable how impressed he was by both the potential of physical resources available in Northern Ireland to progress Barnahus, particularly the Rowan Centre, as well as the commitment shown by statutory agencies to improve how all elements of the justice system responded to child victims. NICCY acknowledges the ongoing work to improve current arrangements in Northern Ireland[[23]](#footnote-23) and the momentum that this has been given following publication of Sir John Gillen’s Review of law and procedures in serious sexual offences. We warmly welcomed the Review recommendation that urgent consideration be given to the advantages of the Barnahus scheme and pilot operating in England and that the viability of Barnahus in Northern Ireland be assessed. It is important that New Decade New Approach[[24]](#footnote-24) sets out the commitment of the Northern Ireland Executive to address the findings of the Gillen Review and it is timely that proper consideration of Barnahus is now underway in Northern Ireland.

**Conclusion**

The Commissioner for Children and Young People recommends that the Barnahus or Child House model is introduced in Northern Ireland in cases of sexual offences against children under 18 years.

The obligations and protections that must be afforded to child victims under the UNCRC and the Lanzarote Conventions are clear. As Commissioner for Children and Young People I am not of the view that these obligations to child victims and witness can be met by simply making minor adjustments to a flawed system while failing to address the fundamental problems of current arrangements. In essence, we need a system which has the best interest of child victims at its heart, reduces risks of re-traumatisation, ensures the highest quality of evidence is available for determining outcomes for defendants and thus improves the fairness and quality of justice for all involved. Barnahus is the model which fits this criteria and the children of Northern Ireland deserve no less.

NICCY fully accept that Northern Ireland must ensure that the adaption of Barnahus is based on a robust understanding of the roles and remit of different professionals and organisations and how the transition to new arrangements and ways of working can best be achieved. This must, of course, involve co-design process with victims and their advocates and NICCY looks forward to advising on and engaging in such a process.

1. PSNI statistics for 2018/19 state that 3,547 sexual offences were reported and that 2,041 of these were against children under 18. PSNI (2019) Trends in Police Reported Crime in Northern Ireland 1998/99 to 2018/19. https://www.psni.police.uk/inside-psni/Statistics/police-recorded-crime-statistics/ [↑](#footnote-ref-1)
2. NPSCC estimates that for every child on a child protection plan or register another eight experience maltreatment or abuse. Bentley, H. et al (2017) How safe are our children? London: NSPCC. [↑](#footnote-ref-2)
3. NSPCC found that only 19% of reported sexual offences against children had been detected or ‘cleared up’ in Bunting L. (2011) Child Victims in contact with the criminal justice system in NI. Belfast: NSPCC.

   PSNI figures show that only 4% of all reported rape cases (where the victim was either a child or adult) in 2018/19 had resulted in a charge or summons to date. PSNI (2019) Outcomes of Crimes Recorded by Police in Northern Ireland 2015/16 to 2018/19. https://www.psni.police.uk/inside-psni/Statistics/police-recorded-crime-statistics/ [↑](#footnote-ref-3)
4. Sir John Gillen (2019) Report into the law and procedures in serious sexual offences in Northern Ireland. <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf> [↑](#footnote-ref-4)
5. K. Marshall (2014) Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry. Belfast: RQIA.

   NICCY has reviewed Departmental CSE Action Plans and Progress Reports.

   <https://www.niccy.org/about-us/our-current-work/high-level-corporate-objectives/children-s-right-to-health-protection-from-violence-or-abuse/child-sexual-exploitation-cse/> [↑](#footnote-ref-5)
6. Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. See paras 45 and 81:

   <https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx> [↑](#footnote-ref-6)
7. Committee on the Rights of the Child (2011) General Comment No13: The right of the child to freedom from all forms of violence; para 3. Geneva: CRC. [↑](#footnote-ref-7)
8. ibid, para 51. [↑](#footnote-ref-8)
9. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. <https://rm.coe.int/protection-of-children-against-sexual-exploitation-and-sexual-abuse/1680794e97> [↑](#footnote-ref-9)
10. Barnahus operates across a number of Nordic countries (including Sweden, Norway, Denmark and Greenland) and in Lithuania, Estonia, Germany, Hungary, Latvia, Croatia, Finland, the Netherlands and Poland with comparable developments in place or underway in Cyprus, Estonia, Malta, Bulgaria, Luxembourg, Portugal, Romania and Spain.

    Please note that references to Barnahus across Europe in this paper are drawn from D. Wenke (2017) Enabling Child Sensitive Justice, Council of the Baltic Seas. <https://www.childrenatrisk.eu/promise/wp-content/uploads/PROMISE-Enabling-Child-Sensitive-Justice.pdf> [↑](#footnote-ref-10)
11. Council of Europe (2018) Protection of children against sexual exploitation and abuse: Child friendly, multidisciplinary and interagency response inspired by the Barnahus model <https://rm.coe.int/protection-of-children-against-sexual-exploitation-and-abuse-child-fri/168079426a>? [↑](#footnote-ref-11)
12. NICCY (2018) Advice on the Review of arrangements to deliver justice in serious sexual offence cases. <https://www.niccy.org/publications/2018/september/07/review-of-sexual-offences-cases/> [↑](#footnote-ref-12)
13. Further information is available from Barnaverndarstofa, the Government Agency for Child Protection in Iceland. http://www.bvs.is/english [↑](#footnote-ref-13)
14. Wenke D. (2017) Enabling Child Sensitive Justice: The Success Story of the Barnahus Model and its Expansion in Europe. Council of the Baltic Seas [↑](#footnote-ref-14)
15. O’Donnell R. (2020) At the Crossroads: Exploring changes to criminal justice proceedings when they intersect with child protection responsibilities in cases involving child victims of violence. Stockholm: Council of the Baltic Seas. [↑](#footnote-ref-15)
16. Wenke D. (2017) Enabling Child Sensitive Justice: The Success Story of the Barnahus Model and its Expansion in Europe. Council of the Baltic Seas. [↑](#footnote-ref-16)
17. O’Donnell R. (2020) At the Crossroads: Exploring changes to criminal justice proceedings when they intersect with child protection responsibilities in cases involving child victims of violence. Stockholm: Council of the Baltic Seas. [↑](#footnote-ref-17)
18. Cited in Children’s Commissioner for England (2016) Barnahus: Improving the response to child sexual abuse in England. Available at: https://www.childrenscommissioner.gov.uk/publication/barnahus-improving-the-response-to-child-sexual-abuse-in-england/ [↑](#footnote-ref-18)
19. Wenke D. (2017) Enabling Child Sensitive Justice: The Success Story of the Barnahus Model and its Expansion in Europe. Council of the Baltic Seas. [↑](#footnote-ref-19)
20. Haldorssan O. L. (2017) European Barnahus Quality Standards – Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence. Council of the Baltic Sea States Secretariat and Child Circle.

    O’Donnell R. (2017) Compendium of Law and Guidance: European and international instruments concerning child victims and witness of violence. Stockholm: Council of the Baltic Sea States Secretariat and Child Circle. [↑](#footnote-ref-20)
21. Wenke D. (2017) Enabling Child Sensitive Justice: The Success Story of the Barnahus Model and its Expansion in Europe. Council of the Baltic Seas. [↑](#footnote-ref-21)
22. Harewood E. (2019) The Lighthouse Annual Report 2018-19. https://www.thelighthouse-london.org.uk/wp-content/uploads/2020/01/Lighthouse-Annual-Report-2019-web-version.pdf [↑](#footnote-ref-22)
23. This includes activity undertaken by the Gillen Review Implementation programme, the pilot to expedite serious sexual offence cases involving witnesses under 13 years in Belfast and the forthcoming Thematic Inspection of CSE by the Criminal Justice Inspectorate. [↑](#footnote-ref-23)
24. New Decade New Approach. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf> [↑](#footnote-ref-24)