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Dear Moira

RE: The Northern Ireland Commissioner for Children and Young People's response to proposals to extend the Offence in Domestic Violence, Crime and Victims Act (2004) to include "causing or allowing serious physical harm to a child or vulnerable adult"

Thank you for the recent invite to respond to Government proposals to extend the Offence in Domestic Violence, Crime and Victims Act (2004) to include "causing or allowing serious physical harm to a child or vulnerable adult.

General Comments

As Northern Ireland Commissioner for Children and Young People the principle aim of my role, as set out under the 2003 Order, is to safeguard and promote the rights and best interests of children and young people in NI. The United Nations Convention of the Rights of the Child is the main rights framework which directs the work of my Office.

The UK Government, including Northern Ireland, is a signatory to the Convention and it has agreed to uphold the rights of children and young people based on it. The UN Convention consists of 42 articles, detailing those range of rights. The focus of this legislative proposal is relevant to the key articles of the Convention known as Protection Rights - in particular, Article 6, outlines a child's fundamental right to life and Article 19, outlines Government's responsibility to ensure that children are properly cared for, and protected from violence, abuse and neglect by their parents or anyone else who looks after them.

The Committee on the Rights of the Child, in its 2008 Concluding Observations to the UK State Party, which includes Northern Ireland as a devolved institution, indicated that it remains alarmed by the high prevalence of violence, abuse and neglect of children, including in the home (CRC/C/GBR/CO/4¹). Therefore we welcome any steps taken by Government to prevent or mitigate against such breaches in a child's fundamental rights.

¹ CRC Concluding Observations for UK 2008
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

Do you agree with the proposed provisions to extend the offence as outlined above?

I recognise the existing gap in legislation in cases where it is clear that serious injuries, short of death, have been suffered by a 'child' aged under 16 yrs old or a vulnerable adult, sustained at the hands of one or more members of the household, without there being sufficient evidence to point to a particular person. I fully support the purpose of the extension to prevent those accused of causing serious physical harm to a child or vulnerable adult from escaping justice by remaining silent or blaming someone else.

Provisions as they relate to under 16 year olds

In my response, I wish to focus on the following proposed provision- *"Any child under the age of 16 may not be charged unless they are the parents of the victim."*

This provision would mean that there 'may' be no duty on a child under 16 to prevent his/her parents from harming another member of the household who is a child (defined as under 16) or vulnerable adult (defined as over 16s who have a physical or mental disability through old age or otherwise), however, the parents of a child will be expected to take reasonable steps to protect their child even if they themselves are under 16. I fully understand that a 'parent', holds a 'duty of care' for their child, and that this proposed provision relates to the most serious physical harm being inflicted on a child by someone in their household. Under the legislation which established my Office, a 'child' is defined as those up to the age of 18 years old or 21 years old where they are in care or have a disability. Due to the remit of my Office it is important that I consider the wider child rights implications from this change in Legislation.

Northern Ireland's rates of teenage pregnancy are among the highest in Western Europe and are most prevalent in areas of greatest social and economic deprivation. While some older teenagers may choose to become pregnant, the majority do not. Unplanned teenage pregnancies can force those still regarded as going through childhood themselves, into the realities and decisions associated with adulthood and with which they are ill-equipped to cope. (Teenage Pregnancy and Parenthood Strategy and Action Plan 2002-2007²). The most recent statistics available for Northern Ireland indicate that, in 2012, 30 births were to mothers aged under 16 and 216 were born to mothers aged 16-17³.

In the instance where a child is a parent of a child that is seriously harmed, particular investigation into their personal circumstances and support arrangements, including if and how statutory duties were discharged by relevant authorities, must be conducted, to

² Cited in CYPSP Northern Ireland Monitoring Report 2014- <http://www.cypsp.org/publications.htm>

³ NISRA- Live births by single year of age and marital status
<http://www.nisra.gov.uk/demography/default.asp8.htm>

ensure that appropriate consideration is given to the judgement on what the defendant could have reasonably been expected to do. The nature of the reasonableness test for a child, particularly an under 16 year old parent, who themselves, it could be argued, may be deemed 'vulnerable' under an alternative definition, is important when determining what actions they should and could have taken to prevent harm being done to their child.

Furthermore, the legislation as drafted, refers to the fact that an under 16 year old living in a household where another child is harmed 'may' not be charged. This suggests that there could be some instances where a child may be charged - in line with the points made above in respect to an under 16 year old parent, particular investigation into their personal circumstances and support arrangements must be conducted as appropriate which takes account of their level of competency and inherent vulnerabilities as a child.

In summary, I feel it would be helpful for clarification to be provided in respect of the steps which would reasonably be expected of any under 16 year old, in preventing harm being done to another child or vulnerable adult in their household, including the parent of a child that is seriously harmed. I also consider that clear guidance should be provided to investigating authorities and relevant appropriate authorities to assist in the investigation, decision in respect of prosecution, any prosecution pursued and sentence passed. We are aware that explanatory notes of key provisions and the circumstances in which they apply were provided in England and Wales on the commencement of this legislation⁴.

Definition of a Vulnerable Adult

A 'vulnerable adult' is defined in this proposal as *a person aged 16 or over whose ability to protect themselves from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise*. When the same provisions were being passed in England and Wales in 2012, a Circular was sent to the Criminal Justice system outlining how the provisions applied, and included reference to *'the fact that the definition of 'vulnerable adult' could equally apply to a possible 'defendant' as well as a 'victim'...()* So, for example, *the steps that someone with a learning disability could be reasonably expected to take to protect a child or vulnerable adult from foreseeable risk of serious harm may be more limited than the steps that someone without a learning disability could reasonably have been expected to take.* (pg 4⁵).

Furthermore, the definition of 'vulnerable adult' could arguably extend to those who are victims of domestic violence, which can include physical violence, along with more subtle forms such as psychological, verbal, sexual, financial and emotional abuse. All children, including older teenagers who are 16-17 years old are very much the 'silent victims' of domestic violence. They may witness it or be subject to it, but often their voices aren't

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/219903/circular-03-12-dvcv-act.pdf

⁵ Ibid

heard (Tackling Violence at Home, 2005⁶). Figures show fluctuations from year to year over all areas, however in the last year the number of child victims of domestic violence has increased from 1.7 per 1000 of the population aged 0-17 years old in 2007 / '08 to 3.6 per 1000 in 2013/14. The statistics presented are based on incidents reported to and recorded by the PSNI and it is recognised that these statistics are an under-estimation of the actual number of child victims (CYPSP, 2014⁷). This is an equally important point to be highlighted in explanatory notes for Northern Ireland on how the provisions will apply.

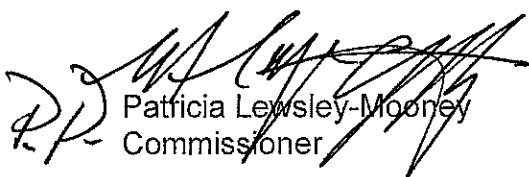
Do you agree with the proposed sentence?

I understand that maximum imprisonment for this crime is a period not exceeding 10 years and is equivalent to the current law in England and Wales. We believe this is a matter on which the judiciary should make a decision.

I would appreciate further information on who/which groups were targeted for this consultation and the rationale as to why it was not carried out as an open and public consultation. In principle, I believe it is important to have an open consultation, unless there are clear reasons for not doing so, my main concern being that key stakeholders may be inadvertently missed. We trust that a wide range of stakeholders were given the opportunity to respond to this consultation, including the breadth of '3rd Sector' i.e. Voluntary and Community Sector organisations including young parents' groups, youth groups, organisations working on domestic violence impacts and reduction, women's groups and those in the broader community development field, particularly those in deprived areas whilst bearing in mind domestic violence is evident across the social spectrum as well as all Relevant Authorities, the Judiciary etc.

In summary, I support the new provisions as set out, however, I reiterate the need to address the specific considerations all relevant appropriate authorities should take into account when determining what steps are deemed reasonable for an under 16 year old to prevent serious harm to others in their household, including those who are parents, and young 'vulnerable adults'.

Yours sincerely



Patricia Lewsley-Mooney
Commissioner

⁶ Cited in CYPSP Northern Ireland Monitoring Report 2014- <http://www.cypsp.org/publications.htm>

⁷ Ibid