Time for Change: Improving Our Justice System for Child Victims of Sexual Offences

"Floating along with current events and trying to steer"

By the Right Honourable Sir John Gillen – 22 March 2019

Introduction

1. May I at the outset thank you for inviting me to attend and giving me the honour to speak at this most important conference

2. As you know I was appointed by the Criminal Justice Board to conduct an independent Review into the law and procedures of serious sexual offences in Northern Ireland. A preliminary report was published on the 19 November 2018 and it was open for a consultation period until 25 January. A number of extensions of time for response were sought and acceded to and hence we have extended the date of my final report to mid-March 2019. The Final Report is currently being proof read.

3. That report was entirely independent of any government body, organisation or person. I was a barrister for 29 years often practising in the criminal courts both as defender and prosecutor in such cases and a judge for 18 years presiding over such serious sexual offences trials both as a trial judge and latterly as an appeal judge. During 6 years of that period I was the senior family judge where similar issues regularly arose where my enduring interest in the fate of children within our justice system was fostered and nurtured

4. In my last two years on the bench I had the privilege of preparing and publishing a review of family law in Northern Ireland in which the role of children played a seminal part. Hence you may find it unsurprising that the longest chapter in my Review and the largest number of recommendations are to be found in my chapter on "The Voice of the Child".

5. Prior to the submission review I and my team personally spoke to over 200 persons, organisations and stake holders in the CJS including those specifically dealing with children including needless to say NICCY ,the NSPCC, Care NI . We conducted 3 public outreach sessions —Derry/Dungannon/and Belfast. We received -just under 250 written responses from individual members of the public, 422 responses to our online questionnaire and a very large number of stakeholders.

6. Most important of all I have personally interviewed, heard and read harrowing accounts from many complainants (male and largely female) and in the context of this conference children who have been through the current system.

7. I regarded these individual face to face meetings, the outreach meetings, conferences such as this and the public consultation process as of cardinal importance in completing the task I have been set.

8. It reflects my long held view that a central dilemma in considering the application of the rule of law is the tension between elite knowledge and “ordinary common sense“. How far should the rule of law be based on everyday understanding and buy in of the majority of the population and how far on the more specialised, less easily intelligible wisdom of legal experts? How can we strike a workable balance between the two?

9. I am convinced that In order for the rule of law and the administration of justice to maintain public confidence it needs always to navigate between the Scylla of legal expertise and the Charybdis of popular sense. Understanding that is crucial in helping us to revitalise the norms and institutions of the law that traditionally have allowed societies to harmonise expert knowledge and popular sense for the common good.

10. To help me in the task of the Review had a superb team of 11 including two people whose task was to research the law and procedures in 16 other jurisdictions including Ireland, Scotland, England and Wales, New Zealand, Australia, South Africa, Canada, USA, the Caribbean, Sweden, Norway, France, Germany, Iceland, The Netherlands and Belgium.

11. Comparative law is an experienced friend especially when looking at how the criminal justice system deals with children and I have drawn heavily on such experiences in I have personally spoken to and communicated with a large number of judges, lawyers and other stakeholders in this field in those countries and they have helped influenced my views. It is crucial that if the best interests of children in Northern Ireland are to be best protected we must make the concept of comparative law and continuing contacts with our international friends in the arena of child protection a cornerstone of all future child friendly developments The Barnahus system about which we are shortly to hear is a classic example.

12. Hence in virtually every chapter of my Review including that chapter on “The Voice of the Child“, I have devoted a section to international standards that we must embrace.

13. Increasing recognition of the potentially negative impact of criminal proceedings and the stresses experienced by child witnesses in the court environment have led many Western countries to develop legislative and policy initiatives aimed at better protecting child witnesses. It is these international standards that must become not only part of our day to day lexicon but they must become a central part of every training program for judges ,professional lawyers, PSNI, PPS and all other stakeholders in the criminal justice system dealing with children.

International Standards

14. 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 and welfare. The four guiding principles that flow through the Convention are: children's right to non-discrimination; the right to survival and development to the highest level; their best interests being a primary consideration; and their voice being heard in all matters affecting them.[1]

15. The Convention also highlights that, as rights holders, children have special rights to protection from abuse and to be supported in their recovery from abuse. The state has an obligation to ensure that appropriate measures and procedures, including court and judicial processes, are in place to realise these rights. The Convention 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. Children's lives cannot be compartmentalised.

16. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) requires that the State takes over "all necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses."[2] Furthermore, that "a child victim and child witness of violence against women and domestic violence be afforded, where appropriate, special protection measures taking into account the best interests of the child".[3]

17. The Lanzarote Convention[4] requires that each State shall "ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers."[5]

18. 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 *Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry* in 2014 must be implemented and stressed that "a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-

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[1] Articles 2 (non-discrimination), 3 (best interests of the child), 6 (survival and development) and 12 (respect for the views of the child) of the UNCRC

[2] Article 26(1) The Council of Europe Convention on preventing and combating violence against women and domestic violence

[3] Article 56(2) The Council of Europe Convention on preventing and combating violence against women and domestic violence

[4] The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse which was ratified by the UK in 2018, requires states to adopt specific legislation and take measures to prevent sexual, to protect child victims and to prosecute perpetrators.

[5] Article 36(1) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention).

appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms."[6]

19. The Committee also recommended that video-recorded interviews with child victims and witnesses be used in court as evidence rather than children attending in person and being subject to cross-examination.

20. The Victims of Crime Directive (Directive 2012/29/EU) also requires, although not specifically for child victims, that measures to avoid contact with offenders and to ensure that the victim can be heard without being present, using communication technology where appropriate are available.[7]

Current Practice

21. The title of my address today is Bismarck's belief was that he was "Floating along with current events and trying to steer". I believe that to some extent we are in that position today with how we treat children in the criminal justice system save that I am not persuaded that we are making sufficient efforts to steer.

22. There is no doubt that over the past two decades in Northern Ireland there have been legislative and policy initiatives aimed at ensuring that child witnesses are able to give their best evidence and receive the support they need. It reflects an increasing awareness of the flawed approach of the past in respect of the treatment of children in court.[8] This has brought about improvements for child victims and witnesses, who are now able to access support through the Young Witness Service (YWS) and avail themselves of special measures that protect them from giving evidence in open court.

23. Encouragingly, children are provided with an assessment by a Registered Intermediary (RI) .In these instances, the assessment and subsequent Ground Rules Hearing (GRH), when they occur, are largely effective at turning the court's attention to the needs of the child giving evidence in most cases. RIs can work to encourage the court to step outside its normal mode of function and to adapt practice to meet the individual needs of the child in the court. I strongly commend this approach.

24. Developments in Northern Ireland have often mirrored those in England and Wales, key amongst them being the introduction of The Children's Evidence (Northern Ireland) Order 1995, which allowed for witness evidence by children to be given via video link and barred defendants from cross-examining child witnesses personally.

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[6] Committee on the Rights of the Child, General Comment No.12 (2009) *The right of the child to be heard* CRC/C/GC/12 at paragraph 34.

[7] Articles 23(3)(a)-(b), Directive 2012/29/EU

[8] R v Christopher Killick [2011] EWCA Crim 1608; Galo (Patrick) v Bombardier Aerospace UK [2016] NICA 25.

25. The Criminal Evidence (Northern Ireland) Order 1999 made provisions for special measures to reduce the stress of children giving evidence at trial:

- screens in the courtroom;
- children can give evidence from a separate room located outside the courtroom;
- the judge has power to clear the courtroom when a child is giving evidence in sexual and intimidation cases;
- digitally recorded evidence in chief occurs; and
- cross-examination can be recorded in advance of trial although this provision has not been implemented.

26. Other good practices for children include:

- a practice of children being familiarised with courts before the hearing in Northern Ireland.
- Victim and Witness Steering Group, this subgroup of the Criminal Justice Board has a central role in managing cross-agency issues impacting on victims and witnesses across the criminal justice system and, through a network of subgroups, is responsible for coordinating key areas of service development and delivery.
- We have rolled out the National Society for the Prevention of Cruelty to Children (NSPCC) Young Witness Service (YWS), which currently operates in all Crown Courts across Northern Ireland.
- Since the millennium, there have been further developments in policy and guidance with a number of criminal justice inspections in Northern Ireland[9] identifying a range of problems in relation to delays within the criminal justice system, attrition in the prosecution of sexual offences, and general lack of confidence in the system and its processes.
- The Independent Inquiry into Child Sexual Exploitation (CSE) in Northern Ireland 2014 was commissioned by the Minister for Health, Social Services and Public Safety and the Minister of Justice. The Minister for Education agreed that the Education and Training Inspectorate would join the inquiry in

[9] Criminal Justice Inspection Northern Ireland (2006) Avoidable delay: a thematic inspection of delay in the processing of criminal cases in Northern Ireland., Belfast: CJINI; Criminal Justice Inspection Northern Ireland (2006) *The management of sex offenders in light of the murder of Mrs Attracta Harron,,* Belfast: CJINI; Criminal Justice Inspection Northern Ireland (2010) *Sexual Violence and Abuse: A thematic inspection of the handling of sexual violence and abuse cases by the Criminal Justice System in Northern Ireland*. Belfast: CJINI; Criminal Justice Inspection Northern Ireland (2018) Without Witness Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in Northern Ireland. Belfast: CJINI

relation to schools and the effectiveness of the statutory curriculum with respect to CSE. The Inquiry published its report in November 2014.[10] Ministers made a commitment to develop action plans in order to implement its recommendations, which included a number of recommendations specific to strengthening criminal justice arrangements. The Departments have produced progress reports following this. CJINI are currently conducting a thematic inspection into child sexual exploitation. Work is ongoing and it is likely this report will be published within the 2019-20 financial year.

27. The Justice Act (Northern Ireland) 2015 (the 2015 Act) has provided, although not yet fully introduced, a number of measures relevant to children with:

- the creation of new statutory Victim and Witness Charters;
- the introduction of Victim Personal Statements;[11]
- information disclosure provisions between criminal justice system service providers;[12]
- and the expansion of video link powers between courts and a number of new locations;
  - speed up the system. Judges are given new case management powers and responsibilities at section 92 of the 2015 Act. The details of this have not yet been completed; and
  - a statutory framework for the management of cases. Through regulation, the Department of Justice (DoJ) will be able to impose duties on the prosecution, the defence and the court, which set out what must be completed prior to commencement of court stages. There is also a general duty on the court, the prosecution and the defence to reach a just outcome as swiftly as possible.

28. The *Equal Treatment Bench Book* (2018) is compiled by the Judicial College for judges in England and Wales.[13] It has been adopted by the Judiciary in Northern Ireland and is exhibited on the Internet. It recognises the key principles set out in the United Nations Convention on the Rights of the Child, including the application of Article 3 that the best interests of the child must be a top priority in all decisions and actions that affect children. Chapter 2 specifically deals with children, young people and vulnerable adults.

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[10] Marshall, K. (2014) *Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry* Belfast: The Regulation and Quality Improvement Authority

[11] Sections 28-33 of the Justice Act (Northern Ireland) 2015

[12] Schedule 3 of the Justice Act (Northern Ireland) 2015

[13] Judicial College (2018) Equal Treatment Bench Book 2018. Available at: https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/

Procedure v Outcome

29. The overwhelming problem however is that the presence of policy and procedures do not guarantee good outcomes. These potential improvements and policies are not being converted into a system that is guaranteeing the rights of children. Child protection and justice processes in Northern Ireland are still based on the adversarial procedure for cases concerning serious sexual offences against children which in its purest form is simply not a plausible vehicle for protecting children's rights.

30. How we deal with children in the criminal justice system is unacceptable. Child victims in the criminal justice system live in dark times. There has been a great increase in recorded offences of abuse of children. In Northern Ireland in 2011/12, there were 985 sexual offences recorded in relation to children. In 2017/18, this had risen to 1,936.Children make up the majority of victims of sexual crime (58% in 2017/18) reported to the Police Service of Northern Ireland.

31. However, the under-reporting and attrition rate of sexual crime against children and young people is still alarming . In examining the prevalence of child abuse in the UK, the NSPCC has estimated that, for every child on a child protection plan or register, another eight were experiencing maltreatment or abuse. In assessing the extent of sexual abuse against children within family settings the Children's Commissioner for England found that only one in eight children who are sexually abused were identified by professionals.[14]

32. The Child Care Centre is a multi-disciplinary unit which specialises in the investigation of child sexual abuse and provision of therapy in Belfast. It recorded that less than 5% of its cases where they believed children had been sexually abused had been subject to charges by the PPS.

33. A range of factors can act as barriers to identification and reporting, including the power relationship endemic to abuse, the emotional impact of abuse, which can induce fear, shame and guilt on the part of the victim, and the nature of our child protection and justice systems, which largely rely on the capacity and ability of a child or young person to disclose that they have been abused.

Delay

34.Delay in the hearing of cases and, in particular, cases involving children has been a continuing problem and is a matter of profound concern. Delay in rape cases in NI is twice as long as in England and Wales being on average 943 days but it is even

[14] Children's Commissioner for England (2015) *Protecting Children from Harm – a critical assessment of child sexual abuse in the family network in England and priorities for action* London: Children's Commissioner

worse in children's cases being on average 986 days. A Northern Ireland Audit Office (NIAO) report in March 2018 identifies weakness in the early stages of investigations — namely, when the PSNI compiles evidence and the PPS makes a decision on prosecution as the most critical cause of delay in criminal. We have also been advised by the Northern Ireland Statistics and Research Agency (NISRA) for the Department of Justice that the time is increasing rather than decreasing for sexual abuse cases involving children. *The Youth Witness Service submissions*

35. Delay is but one of a myriad of problems in the procedures. The NSPCC's Youth Witness Service (YWS) produced a concerning submission for my Review. What lent weight to the deep concerns expressed by YWS practitioners is that it virtually mirrors the experiences in England, voiced in highly authoritative reports by Joyce Plotnikoff and Richard Woolfson dealing with young witness policy and practice.[15]

36.In their recently published report,[16] Plotnikoff and Woolfson record that despite the improvement of the policy and practice framework for young witnesses in England and Wales since 2009, provision of support is inconsistent. Furthermore, there is a lack of leadership, ownership and accountability for this policy and practice. This means some children are still at risk of having negative experiences and being traumatised. The report highlights that child sexual abuse cases take longer to get to court than other types of crime, and the time between the initial report and the trial is getting longer.[17] This is further complicated by the absence of official statistics about the number of children giving evidence in court, and unofficial statistics are difficult to compare and understand.

36. Let me highlight just some of the problems highlighted to me by the YWS:

- contrary to UNCRC's Article 12, which asserts that every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously, the YWS found that there is little evidence of consultation with children to hear their views about issues such as special measures or the court environment in any systematic and meaningful way.

    i. Prosecutors may at times arrive to court with limited awareness of case detail and little or no previous engagement with the child or family

    ii. The full range of special measures is not available and applied to children even when it might be in the child's best interest for them to be applied; The perception is that there may be a lack of awareness of the range of special measures available, a reluctance to apply for special

[15]Plotnikoff, J. and Wolfson, R. (2009) *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings* London: NSPCC..

[16] Plotnikoff, J. and Wolfson, R. (2019) *Falling short?: a snapshot of young witness policy and practice* London: NSPCC..

[17] As above, section 2.2

measures and/or an unwillingness to grant less common special measures

iii. Digitally recorded cross-examination is not as yet available;

iv. Closed courts are applied in only a small number of cases. The Criminal Evidence (Northern Ireland) Order 1999 is available to have evidence heard in private for children, but it is rarely applied for. Combined measures, including video link with screens, are rarely used;

v. There is a general lack of awareness of how traumatic an experience court can be for a child with little evidence of systemic trauma-informed practice.

vi. Training is obviously needed for all involved in the criminal justice system, including court staff, legal professionals and the Judiciary;

vii. Courts often request that children are in attendance from the start of the day even when experience and practice reveals that the child's case will not start until the afternoon. Lengthy waiting times and delays can be distressing for a child;

viii. There is no evidence in practice of the advice set out in the *Equal Treatment Bench Book* that there should be systematic scheduling of witness start times for children.[18] Currently, the witness is required to be at court and available when the court is ready for them, with often no indication of when this will be. The needs of child witnesses are very rarely (with some exceptions) factored in to planning. The impact of a long wait before giving evidence may affect schoolchildren most;

ix. Current PPS statistics do not differentiate between adult victims/witness and children in terms of timescales;

x. There are multiple examples of children being asked to attend courts where the court premises and layout are not fit for purpose with:

- no safe waiting room space for the child;
- children having to share a waiting room with other vulnerable witnesses including adults, where there is the potential breach of anonymity;
- children having to walk through the main waiting room past defendants and the public to use restroom facilities; and
- no requests that a trial be moved when the court is known to be unsuitable for a child;

xi. There is no consultation with the YWS when it comes to setting dates, meaning that at times cases must be transferred from the original key worker, who has established relationships with the witness and

[18] Judicial College (2018) Equal Treatment Bench Book 2018. Available at: https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/ at chapter 2, paragraph 56.

families, to new workers. This can increase anxiety for the witness and may impact on their ability to give evidence on the day;

xii. Children are at times cross-examined for longer than optimal times, without the principle of regular breaks being consistently applied. There are experiences of cross-examination routinely exceeding that which should be expected of a vulnerable child, with cross-examination at times exceeding two hours without regular breaks;[19]

xiii. Whilst live link is used in most cases involving children, almost all the live link facilities are in court facilities. The expansion of live links into other non-court facilities would greatly improve the experience for children and vulnerable witnesses in general. Options could include locating facilities in NSPCC premises or investment in mobile live link equipment;

xiv. The best interests of the child are not consistently considered when planning a time to allow a child to review an ABE interview. A child may be expected to review the interview on the day of court when it may be the child's preference to do so beforehand. At times, investigating officers have not been aware that they have a role in the ABE interview refresh and have had to be prompted by YWS staff. In fairness, the PSNI have explained in the response to this review that the importance of good planning to allow a child appropriate time to review their interview is placed to the fore in PSNI thinking;

xv. It is a regular occurrence that the required equipment is not available to allow the witness to be refreshed on their ABE interview on the day. These issues often cause unnecessary delay and increase the anxiety and distress of witnesses;

xvi. There are also regular problems with ABE interview playback in court where the equipment does not work on the day;

xvii. Children are often expected to watch their ABE interview with the judge and jury, with the child being visible to the court during this time. There appears to be a preference for simultaneous viewing of the ABE by the courts and the child;

xviii. Chapter 2, paragraph 98 of the *Equal Treatment Bench Book* references the young witness protocol and advises that "all young witnesses should ideally have an intermediary assessment as, no matter how advanced they appear, their language comprehension is likely to be less than that of an adult witness."[20] YWS practitioners

[19] The Child Care Centre advises that the adversarial nature of the criminal court diminishes the opportunity for young children to give their best evidence, taking little cognisance of the child's developmental level, and how they perceive situations and report events.

[20] Judicial College (2018) Equal Treatment Bench Book 2018. Available at: https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/ at chapter 2, paragraph 56.

report that this is not the current practice and that the use of RIs is relatively rare, inconsistent and at times resisted even when significant vulnerability and need has been identified by qualified social workers within the YWS staff group. This is despite the fact that I am assured by the DoJ that, unlike in England, the supply of RIs in Northern Ireland is plentiful;

xix. There is little evidence of an effective initial needs assessment being undertaken with respect to witnesses and, when they are undertaken, these are not communicated to YWS practitioners. We also find that issues such as ADHD/ASD go unreported prior to the YWS assessment;

xx. Chapter 2, paragraph 120 of the *Equal Treatment Bench Book* advises that best practice is to hold a Ground Rules Hearing where there is a young witness.[21] YWS practitioners report that this is not routinely practised except when an RI is involved;

xxi. Too often the decision as to whether a RI is involved, is taken by the judge, on the day of the hearing itself. This is challenging for the child and family as they will not know when arriving to court if the child will have the support of an RI while giving evidence. This can be anxiety-provoking;

xxii. YWS practitioners report that the tone and manner of questioning can be experienced as authoritarian and frightening to children. It is noteworthy that NISRA statisticians working for the Department of Justice found that 56% of witnesses during 2016/17 felt that the defence was discourteous in its engagement with them. This figure has been consistently high over the five years covered in the research report;

xxiii. Children are asked about third-party material without any previous context being provided to the witness;

xxiv. Except for cases where an RI has been used, and thus the courts are notably more tuned in to the child, YWS staff and volunteers report that courts often do not adapt their language and style to meet the needs of the child with whom they are communicating;

xxv. YWS practitioners report that children are often asked the same questions repeatedly when giving evidence. This has a destabilising and anxiety-provoking impact on children and can lead to inaccurate responses from children with learning disabilities; and

xxvi. There is no current working mechanism for supporters of victims and witnesses to routinely provide feedback to individual trial judges on the child's experience of their court and the effectiveness of the local

[21] As above.

systems to support them.

37. The criticisms of the law and procedure do not end with the NSPCC. NICCY has also made some trenchant criticism of the procedures as follows.

38. In particular, NICCY has closely monitored the implementation process of the recommendations of the *Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry* in 2014 (the Marshall Inquiry). NICCY continue to have significant concerns about the lack of evidence to demonstrate that implementation has been effective and is improving outcomes for children.

39. Supporting recommendation 44: The Department of Justice should continue to seek to develop and improve the experiences of young witnesses, taking into account research and learning from other countries. This should include consultation with stakeholder groups and young witnesses.[22]

40. The Department confines its learning to other jurisdictions within the UK. There are traditionally no researchers retained by the DoJ and little research is done into developments outside the UK.

41. Supporting recommendation 46: Awareness-raising about the dynamics of child abuse and CSE in particular should be available for all legal personnel and be mandatory for all legal professionals dealing with child abuse cases. This should be made the responsibility of the PPS for its own legal staff, the Northern Ireland Bar for its staff [and the Law Society for their members], and the Judicial Studies Board [JSB] for judges.[23]

42. Northern Ireland does not have mandatory training relating to children for the Bar or the Law Society. In 2015, the authorities in England and Wales stated that it had made it a requirement for publicly funded advocates in serious sexual offence cases to have undertaken approved specialist training. The Advocacy and the Vulnerable Training was developed in conjunction with the Bar to help solicitor advocates and barristers strike the balance between advancing their client's case effectively in court whilst ensuring vulnerable witnesses are not subjected to undue stress. The Ministry of Justice has not yet made this training compulsory for all publicly-funded advocates acting in serious sexual offences cases. The Ministry's inaction has been met with dismay by some of the course's lead facilitators. No steps have been taken to address this in Northern Ireland.

43. Finally I add to these problems the frailties inherent in a system of ABEs where children are interviewed in strange and often alien settings by police officers who whilst they have received some measure of training are not child experts and never will be.

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[22] As above.

[23] As above.

Solutions

44. How are we to solve these problems First and foremost we require a cultural change in our attitudes to children within the criminal justice system .We must create a model of criminal justice which not only ensures the voice of the child is heard but which recognises and comprehends the vulnerability of child victims and the potential permanent harm which the present system may carry within.

45. The Barnahus system about which we are shortly to hear carries the seeds of potential resolution providing as it does a child friendly environment where the child can have forensic intervention, make court statements, have medical examination and access therapeutic services under one roof .Already it is being piloted in London and Durham .Scotland is enthusiastically pursuing the concept. Why not here in NI.

46. Secondly we need to introduce a fresh understanding of issues unique to children into the main actors in the criminal justice system .I am encouraged to note that NICCY has proposed expert input for the benefit of all legal personnel and jury members should be provided at the beginning of each trial to address key issues such as the power dynamics of sexual abuse and grooming and to include 'myth busting. We are already proposing videos for juries to dispel rape myths and this should be geared also to issues surrounding children

47. In addition to developing a better understanding of under-reporting and the attrition rate of reported offences, those participating in the justice system in Northern Ireland, including the Judiciary, legal professionals, the PPS and the PSNI, should seek to better understand the experiences of children and young people. No publicly funded lawyer should be permitted to participate in such cases unless they have undergone an approved training programme. They all need to recognise the extent of the confidence gap in the system in order to support and protect them and to deliver justice.

48. Accordingly, more mandatory training on such issues needs to be introduced by the Judicial Studies Board, the Law Society, the Bar Council, the PPS and the PSNI, invoking the assistance of the NSPCC's YWS and NICCY and child psychologists.

49. Let me deal with the judiciary directly. The JSB should meet the needs of the child who is giving evidence. The dynamics of the trauma of child sexual abuse should be prioritised in its training programme. Such an approach seems to be currently lacking. It should invoke the assistance of child psychologists and other outside agencies with expertise in this field. It is not enough to rely on this somehow emerging during the courses currently attended by our judges in England, albeit having attended such a course myself I can say that it is extremely useful.

49. I understand that each new judge meets the JSB to discuss training, and reference is made to the presence of the *Equal Treatment Bench Book* on the Internet. This is clearly proving inadequate and specific training through lectures needs to be given to address the very weaknesses in the system contained in this chapter.

50. The first step may be to furnish each judge with a physical as well as an online copy of the *Equal Treatment Bench Book*. It should be present on every judicial desk in some format during a hearing involving a child. Judges need to be encouraged to take its guidance fully into account wherever possible.

51. Familiarity with that book, better training and an increased understanding of the needs of children would represent the most effective way of ensuring that not only are the issues we have outlined addressed at the GRHs but also ensure a number of other vital steps are taken which would include:

52. Thirdly section 16 of The Criminal Evidence (Northern Ireland) Order 1999 should be introduced with prerecorded cross examination of children in advance of trial in a remote evidence centre which is child friendly environment away from the court .Questions should have prior judicial approval .

53. In this context Case management steps must become better informed, more robust and more consistently applied in the case of children and vulnerable adults, permitting the new culture of advocacy to take root. Contrary to the present system that confines bespoke case management hearings to those few cases involving murder and terrorism, all cases involving child complainants or other vulnerable witnesses in serious sexual offences (and indeed eventually extended to all complainants in serious sexual offences) should be afforded such hearings. A recognition by the Judiciary of the trauma that such cases can occasion children must inexorably lend weight to that step being taken as a matter of urgency, with appropriate administrative staff being applied to such cases to ensure timely and comprehensive compliance with GRH directions.

54. GRHs should define the issues for trial, such as:[24]

- It is eminently reasonable that proposed questions to be asked in cross-examination of children require written notice in advance to the judge and the intermediary for their perusal and approval;
- An emphasis on the need to avoid tag questions, to use short and simple sentences and easy-to-understand language, and to avoid the use of tone of voice to imply an answer;

[24] Rook, P. and Ward, R. (2016) *Sexual Offences: Law and Practice*,: 5th edn. London: Sweet & Maxwell.

- Time limits on cross-examination;
- If limitation is to be put on cross-examination, how the jury will be directed;
- The presence of an intermediary and YWS in the course of the proceedings;
- An emphasis on agreed statement of facts wherever possible in advance to shorten the trial;
- Any legal aid complications arising;
- Disclosure and particularly third-party disclosure, with a firm involvement of the defence and prosecution in presenting a cards-up approach from an early stage as to what disclosure is relevant to the defined issues; and
- Venue: live link from a remote location is in many instances the preferred model for all vulnerable witnesses, especially children. This can reduce the trauma of the courtroom and the attendant danger of meeting the accused. It is also likely to provide more attractive facilities, which are lacking in many of our present courtrooms.

55. Special measures should also be given a high priority at these early hearings.

56. Timings etc. for the child, including scheduled breaks with a target time of two hours' maximum waiting time should be considered at the GRH.

57. Those directions given at the GRH by the judge should be committed to written form so there is no room for confusion, and compliance should be monitored by a court progression officer.

- Wherever possible hearing dates should be suitable for members of the YWS and intermediaries who are familiar to the child;
- Robustly enquiring into reasons for adjournments, which should be granted only exceptionally;
- Insisting technology is tested in advance of the hearing before the child arrives and, if necessary, insisting on the presence of an expert to effect this;
- Where courthouses are unsuitable for children, either considering a change of venue or making such directions as to arrival times of the parties as will ensure the child can arrive at court without meeting the accused or their family/friends. In addition, specifically addressing what can be done with the facilities available at a GRH to reduce the possibility of confrontation;
- Taking steps to secure an interim assessment of each child by the intermediary, which should be circulated to the YWS;
- Ensuring there will be familiarisation of the child with the court, the judge and counsel prior to the hearing commencing;
- Discussion with the relevant intermediary as to the needs of the child before the day of hearing;

- Ensuring the child sees the ABE interview to refresh their memory at the optimum time for that child and not necessarily on the day of the hearing; and
- Careful use of and insistence on simple language that children can comprehend.

58. Secondly, child victims and complainants should have access to a legal representative or advocate whose role is to protect the rights and best interests of the child and who has an authoritative position in proceedings (see chapter 5).

59. Next technology as a significant problem with cases involving young witnesses, with difficulties at times having a clear view of the witness's facial expressions over the live link and hearing the witness clearly. Moreover, a frequent complaint is that the position of the camera is hopelessly misaligned and the voice is difficult to hear. Virtually without exception, Crown Court judges have had the experience of the technology not working at all on many occasions, occasioning lengthy delays and adjourned hearings.

60. Finally, I fail to see the logic in confining the availability of RIs to a child defendant to when they are giving evidence. There should be a duty to assist a defendant before the trial to enable that defendant to prepare effectively and understand all aspects of the trial process. I also do not understand why live link should not be available to a child defendant who is suffering fear or distress.

Conclusion

61. We need to adapt criminal proceedings in serious sexual offences to accommodate children. Courts have safe guarding responsibilities in respect of children and the exercise of judicial discretion often has a safeguarding dimension. It needs to be recognised that children under stress can function at a lower level in otherwise making it more difficult for them to remember accurately and think clearly. Accordingly the law and procedures must at times be adapted flexibly to ensure that children are not disadvantaged by conventional law and procedures.

62. A fresh culture of advocacy for children and vulnerable adults needs to be invoked, which will challenge the traditional style of advocacy. Rethinking the approach to the need for the presence in court of a child and the nature of the cross-examination does no more than elicit a civilised way to treat vulnerable children and produce an environment where the truth is more likely to emerge and still respects due process.

63. The weaknesses procedurally in the system with reference to children and, for that matter, vulnerable adults are not only self-evident but in most instances

can be altered without a change of law by implementing more robustly the law and procedures that are already in existence. Alongside this, there needs to be adjustment to the Crown Court Rules necessary to implement the new departure from the traditional style of advocacy with children and vulnerable witnesses.

64. One of my favourite poets is Bertolt Brecht .One of his great poems is about dark times in which he lived in the 1930s .His poem poses the question as to how those who came after him would view those who had tolerated those times .His poem ends

“But they will not say; the times were dark.

But rather; why were the poets silent “

65. If we are to avoid the opprobrium of legal history we must not remain silent in face of the manifest frailties in how we deal with children. We must not let everyone else off the hook so we will not hang there ourselves. These changes are not rocket science. They are simple and eminently doable.

66. Let me finish with another quotation from a Brecht poem

“And I always thought; the very simplest

words must be enough

When I say what things are

like everyone’s heart must be torn to shreds

That you’ll go down if you don’t stand up for yourself.

Surely you see that “

Surely we see what has to be done.