

Barnardos submission to the Joint Oireachtas Committee on Child Protection

31st August 2006



Introduction

Barnardos welcomes the opportunity to feed into the deliberations of the Oireachtas Committee on Child Protection. Barnardos believes that the principle of the child's best interests being of first and paramount consideration should underpin any legislative or policy development. It is this principle that is enshrined in the UN Convention on the Rights of the Child (UNCRC) to which Ireland is a signatory. Children and young people are among the most vulnerable members of our society, and that is why our laws have extended extra protection to them until they reach adulthood. The qualities of childhood include immaturity, innocence, trusting and fun loving and it is these qualities that people can seek to abuse so children deserve the highest level of protection from our laws.

Our submission is structured along the same thematic areas as those outlined in the Committee's terms of reference.

1. Age of Consent

Barnardos agrees that there is little point in pitching the age of consent at a level that has no regard to social reality. Any legislation surrounding the age of consent should be the same for both boys and girls and for heterosexual and homosexual acts. Information surrounding age of consent and what it means for young people should be widely available in all venues including schools; youth clubs etc. where young people are likely to access it. User friendly and teenager accessible websites could also be used.

Consensual sexual activity among teenagers (15 years and older)

For young people of similar age engaged in consensual sexual activities where mutual respect and trust is present, neither party should be criminalised. Instead support through education and services is necessary to ensure the most informed decisions can be made.

Barnardos strongly disagrees with the Criminal Law Act 2006 as it could lead to the prosecution of boys under 17 years who have consensual sex with girls aged 16 or 17. When sexual activity is consensual and teenage pregnancies occur, Barnardos believes that the State should not make it more difficult for young fathers to be involved in their child's life. However, when these situations arise through exploitative measures such as rape, then the full rigour of the law needs to be enforced.

Non-consensual / exploitative sexual activity

Relationships among teenagers can also be exploitative with one in four abusers identified in the Sexual Abuse and Violence in Ireland report being under 17 years of age. In the best interests of protecting young people, criteria for assessing where certain circumstances are or are not abusive / exploitative are needed. These could include level of maturity and understanding of the emotional, physical and health consequences of engaging in sexual activity at a young age.

Barnardos welcomes the following key points in the Criminal Law Act 2006:

1. making it an offence to engage in a sexual act with a child under 15 years, regardless of whether it is a girl or boy.
2. those who engage in sex with a child under 17 would also face prosecution and the duration of sentence will increase if the person is a 'person in authority' or if it is a repeated offence.

Honest mistake of age

With the introduction of a plea of honest mistake, Barnardos believes that the onus should be on the accused to

1) Tom O'Malley – Irish Times 31st May 2006

2) McGee, H et al (2001) Sexual Abuse and Violence in Ireland, Rape Crisis Centre, Dublin

prove that they took reasonable steps to ascertain the age of the child prior to engaging in any sexual activity with them. Such steps should not be based on presuming the child was older just because of the developmental changes happening to their bodies or their appearance or their dress or demeanour. It is part of being young to seek to look and behave older.

Children in the courtroom

Having to give evidence in a courtroom can be a very intimidating, confusing and distressing experience for any child but more so for those who have already been through an abusive ordeal. In Barnardos' experience children can experience this cross examination to be almost as traumatic as the abuse itself.

A concern that a child will be unable to give a full accurate and coherent account of their experience often results in children's evidence not being heard. However, under the UNCRC children have a right to give evidence or have their views and concerns heard in cases that determine their future safety or welfare.

Article 12 states:

"State Parties shall assure to the child who is capable of forming his / 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 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."

To honour this right under the UNCRC Barnardos believes that further protection, for both boys and girls, is essential for those children interacting in an adversarial court environment. The recent Criminal Law Act 2006 which could allow the age, demeanour and maturity of a child witness to be taken into account means additional supports for children are now more urgent than ever. Without these supports children are less likely to report abuse and this is a significant concern.

A number of these measures have already been introduced to some extent in court proceedings but Barnardos calls for them to be guaranteed in all cases involving child witnesses.

Pre-Trial Interviews

The conducting of pre-trial interviews with children by social workers and the Gardai is strongly advised. These interviews can take place at the time of the abuse being reported as opposed to waiting to just before the trial. It also avoids the child being interviewed twice. Although both the social workers or other relevant professionals and the Gardai would be used to operating from different perspectives, these interviews should be investigative in nature rather than therapeutic. The recording of these interviews to be used in court as evidence is a form of hearsay and up to the Judge to determine its weight and credibility.

In the UK, Achieving Best Evidence in Criminal Proceedings; guidance for vulnerable or intimidated witnesses including children (2001) replaces the 1992 Department of Health 'Memorandum of Good Practice', it provides guidance for police and social services interviewing children giving evidence either through pre-recorded evidence in-chief or live interviews in the courtroom. The guidance highlights that careful planning, in-depth knowledge of the case and building up a rapport with the child are essential in ensuring the best evidence from the child is gathered.

Barnardos believes that the recommendation of the Ferns Inquiry in this area should be implemented. Namely, enhanced training for social workers and the Gardai in the skill of interviewing children appropriately and being able to provide a child friendly and secure environment for this to take place in order to reduce the trauma for the child. Some training modules have been devised and implemented in this area which will be of assistance.

Video Link

3) Shannon, G (2001) 'Child Sexual Abuse Victims and the Legal Process' in *The End of Innocence* (ed) Lalor, Kevin

4) United Nations (1989) *Convention on the Rights of the Child*, Geneva

5) Nestor, J (2004) *Law of Child Care*, Galway

Use of video link systems enables the evidence of a child to be broadcast live in court during the trial from a separate room. Evidence through a video recording gathered through an approved intermediary can also be accepted e.g. child psychologist. However, few courts in Ireland are sufficiently technically equipped to make this a regular option for child witnesses.

Research from some exploratory studies as well as an evaluation of their use in Scottish Criminal Trials have shown that compared to children who testified in the court room, those using video link were less resistant to leading questions and during cross examination on the activities of the accused were significantly more likely to answer. They were also less likely to report experiencing fear while testifying and more likely to describe the proceedings as fair.

Barnardos has been commissioned to deliver training to the video link assistants within the courts service to support children who are involved in giving evidence and to jointly produce a manual on best practice for that service.

Representative / Advocate

In the interests of ensuring that the child's voice is heard during court proceedings, Barnardos recommends that the appointment of an advocate or guardian be automatic in cases involving child witnesses.

At present, the Guardian ad Litem service which was introduced on a statutory basis in public law cases in the Child Care Act 1991, is largely operational in civil law cases. The Guardian is an independent representative appointed by the court to represent the child's personal and legal interests in the proceedings. In Ireland the appointment of the Guardian is at the discretion of the judge if he/ she deems it is to be necessary in the interests of justice.

Similar type services are available to children in the UK, New Zealand and USA, however, in these jurisdictions the service is automatically given to the child in order to secure their best interests.

Cross-Examination

In relation to cross-examination of children, serious consideration should be given again to the Law Reform Commission Report on Child Sexual Abuse. (LRC 32–1990). That report recommended, among other things, that *“where the court is satisfied that, having regard to the age and/or mental condition of the alleged victim, the interests of justice require that the cross-examination be conducted through a child examiner, in which event the examiner would be required to put to the alleged victim any question permissible under the rules of evidence requested by the defence. Child examiners should be experienced in interviewing children and specially trained in child language, psychology and the relevant law with particular emphasis on the law of evidence.”*

Barnardos believes this would put children more at ease while under cross-examination and guarantee their interests are protected while their voice is being heard.

Other measures

Other measures introduced to varying degrees in Ireland and elsewhere in an effort to make the courtroom setting less formal and daunting have included:

- Removal of wigs and gowns
- Use of screens to shield the witness from the accused
- Evidence of a witness through an intermediary
- Use of communication aids in cases where children have limited vocabulary

Barnardos recommends the introduction of a policy similar to that operated in Scotland:

- All child witnesses have a right to use some or all of the measures / services outlined above when they give evidence.
- In criminal cases about sexual or violent matters, no child witness under 12 has to attend court to give their evidence. It will be given through video link, evidence on commission and greater use of pre-recorded statements.

6) Department of Health, et al (2001) *Achieving Best Evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witness, including Children*, London

7) Mr Justice Murphy (2005) *The Ferns Report*, Dublin

8) Scottish Office (1995) 'Live Television Link – An evaluation of its use by child witnesses in Scottish criminal trials' in Crime and Criminal Justice Research Findings No.4

9) Bilson, A and White, S (2005) 'Representing Children's Views and Best Interest in Court – an International Comparison, in Child Abuse Review Vol 14

3. Constitutional Amendment

Currently, in the Irish Constitution, children's rights are not adequately protected. Article 41 relates to the family and “recognises the family as the natural and primary unit group of society” and also guarantees “to protect the family in its constitution and authority”. These rights are bestowed on the family unit as a whole rather than individual family members, thereby failing to recognise the child as an individual in their own right. In fact, children have very few explicit rights in the Constitution, one such right is the right to be educated according to the wishes of their parents. This lack of an express statement of children’s rights has resulted in a culture in which children’s lives and opinions are not valued to the same extent as adults.

Some children are seriously disadvantaged by the absence of a provision in the Constitution guaranteeing their rights; these include children who are in the care of the state or children who have been abused or those involved in custody or access issues.

Barnardos believes that it is important that both the rights of children and families are respected and is totally committed to securing an express commitment to children’s rights in the Constitution. This will also assist families to ensure the best possible protection for their children.

Barnardos calls on the Oireachtas Committee to recommend the implementation of the call by the UNCRC that an explicit reference to children’s rights be inserted in the Constitution, so that the right of children to have their welfare protected is given paramount importance.

4. Other recommendations

4.1 Prevention strategies

Legislation alone is insufficient, educational and prevention strategies are essential to make children, young people and adults aware of any potential danger and to equip everyone to make more informed decisions.

A. Education

The Social Personal Health Education (SPHE) programme is a core part of the curriculum at primary and secondary level. There are a number of modules within the programme, one being Relationship and Sexuality Education taught in secondary schools. Teachers have received additional training to deliver the RSE module. An evaluation of the RSE found that not all schools had incorporated RSE within the SPHE subject. In 2004, while 95% of schools had timetabled SPHE in the first year, 79% of them had RSE as a component of it. Another study criticised the amount of sexual health education given and that its timing was too late. Both parents and schools have a duty to ensure children and young people have access to sexual health education that is delivered in a child friendly way to ensure that it can have a positive impact on their lives.

As one Barnardos employee described ‘a lot of teenagers do not know what is the current age of consent or what it means so it does not have any influence over their behaviour’.

Overall Barnardos believes the RSE model is effective as it promotes self identity and self esteem enabling young people to make informed decisions. Barnardos recommends that the RSE module be taught in all secondary schools and be extended to all youth services such as Youthreach and juvenile justice services as these young people are already outside mainstream school and potentially more vulnerable. Linked to this is the dissemination of information regarding the age of consent referred to above.

For younger children, the ‘Stay Safe Programme’ conducted in most primary schools helps children be aware of how to identify incidences of abuse and how to report it. Barnardos recommends that this

10) www.scotland.gov.uk/publications

11) UNCRC (1998) *Concluding Observations*, Geneva

12) Morgan, Mark (2000) *Evaluation of Relationship and Sexuality Education Implementation*,

programme be run throughout all schools as it is estimated that up to one in five primary schools are currently not teaching this programme.

B Alcohol

The extent of alcohol use among young people is very high with 83% of 14-17 year olds having drunk alcohol and the average age of starting to drink is 12 years. In fact 33% of all 15/16 year olds binge drink at least three times a month. Alcohol influences young people's behaviour with 35% of sexually active teenagers saying alcohol is a factor in their decision to have sex. Any sexual health educational programmes aimed at young people need to include issues such as alcohol consumption and peer pressure. Also Barnardos calls for the banning of alcohol advertising as it makes it attractive and normalizes drinking. This ban on alcohol has also been called for by Dail na nOg who also suggested other recommendations including echoing those of the Strategic Taskforce on Alcohol by calling for more effective law enforcement and more alcohol free facilities and venues for young people. At a minimum, Barnardos recommends a 9pm watershed to apply to any form of alcohol advertising as a matter of child protection.

C Vetting

It is imperative that all professionals and volunteers who are working with or have unsupervised access to children are subject to police checks in advance of taking up the post. The Garda Central Vetting Unit runs checks on a number of professionals. This list has been recently extended to include teachers, however, volunteers, childminders, GPs, psychologists and others are still not subjected to police checks.

Barnardos recommends that additional resources be given to the Garda Central Vetting Unit to enable all professionals and volunteers working with children to be vetted. In addition, the vetting procedure should include 'soft information' such as cautions, allegations and inquiries rather than receiving information solely on convictions. The inclusion of 'soft information' as is the norm in the UK is essential given the free movement of people between countries. Such a comprehensive vetting system should form an essential part of the recruitment and selection process.

D Public Awareness campaign

Barnardos welcomes the Health Service Executive (HSE) commitment to undertake a national public awareness campaign on child abuse. Such a campaign had been recommended by the SAVI report (2001) and more recently by the Ferns Inquiry (2005). Barnardos offers its support in the development and roll out of this campaign but believes that an ongoing campaign instead of a once-off campaign is necessary in order to change attitudes and beliefs towards child abuse. This campaign should focus on informing adults of their responsibility towards the prevention and reporting of suspected incidences of all forms of abuse along with guarantees that systems will be put in place to respond these allegations of abuse.

A successful model that has been tried, tested and evaluated is the Stop It Now! campaign which has been running in the UK for five years. This model, which could be adapted to the Irish situation, would still aim to protect children by empowering adults to take responsibility for safeguarding children from sexual abuse. The Stop It Now! Campaign works in collaboration with statutory and voluntary organisations. Its innovative model comprises of producing and distributing accurate information and awareness raising materials, developing local projects which engage the local communities and offering a Helpline service for any adults who may have concerns about their own or someone else's sexual thoughts and behaviours towards children.

4.2 Child Protection System

Central to Ireland's child protection system is the implementation and adherence to the Children First guidelines. These national guidelines provide a framework to assist individuals and agencies working with children to identify incidences of child abuse and the procedures to follow to report any concerns by the relevant authorities.

A review of these guidelines is currently underway and Barnardos has fed into this process. From our experience, the implementation of the guidelines is varied across the country leading to issues of inconsistency, confusion and delay. There is also wide variation in the involvement of children and parents in the decision-making processes.

13) Hyde, A and Howlett, E (2004) *Understanding Teenage Sexuality in Ireland*, Dublin

14) www.irishhealth.com

15) Department of Health (2006) *Health Promotion Unit statistics*, Dublin

16) Dail na nOg (2005) *Delegate Report*, Dublin

Barnardos strongly recommends that the revised Children First guidelines be placed on a statutory footing to ensure the highest level of protection for our children. This would enhance public confidence in the child protection system, as it would remove the element of discretion and professionals who are reluctant to report would be able to do so with the support of the law.

The placing of any revised Children First guidelines on a statutory basis would have resource implications, as it could lead to an increase in the number of cases reported. Additional resources would be needed to deal with the investigation of any increase in reports. There would also be a need for sufficient staff to deliver ongoing services to intervene effectively thereby reducing the child's exposure to harm and/or neglect.

4.3 Ferns Inquiry

The Ferns Inquiry into the scale of child sexual abuse in the Dioceses of Ferns highlighted a number of failings on behalf of the Church, Garda and HSE that enabled the abuse to continue. Following their inquiry a number of recommendations were issued. Of particular relevance to this Committee are the following:

- Every organisation that employs, qualifies or appoints people to positions where they have a significant measure of unsupervised access to children should have a published and regularly updated code of conduct dealing with interaction with young people.
- Calls for the legislature to consider the introduction of a new criminal offence which would apply to situations where any person “wantonly or recklessly engages in conduct that creates a substantial risk of bodily injury or sexual abuse to a child or wantonly and recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act.

Barnardos endorses these recommendations and calls on the Oireachtas Committee to endorse their implementation without delay.

4.4 Office of the Ombudsman for Children

Although the Office was established to promote the rights and welfare of all children, there are certain groups of young people that cannot make complaints to the Ombudsman because of restrictions in the Ombudsman for Children's Act, 2002. It prevents the Ombudsman for Children from:

- Investigating any action / cases with children who are detained in prisons and Garda stations. Both the Garda Siochana and the Defence Forces are excluded from the investigating powers of the Ombudsman.
- Investigating any action to decisions relating to status in the refugee appeals process.

Barnardos supports the Ombudsman for Children's call to have the legislation reviewed to ensure these children currently precluded from using the office have equal access to it. Equality of access to measures to safeguard the rights of children and young people is enshrined in the UNCRC.

4.5 Sex Offenders

All child sex offenders should participate in a sex offender treatment programme either in prison or in the community once released. Research has shown that participation in such programmes leads to reduced recidivism rates. However, just eight out of 253 sex offenders in Irish prisons are receiving treatment.

Investment in preventative efforts to treat potential sex offenders is needed and worthwhile. The Stop It Now! helpline targeting abusers, potential abusers and their families has been a successful model and could be replicated in Ireland. Supports for those who do come forward as abusers or potential abusers are essential in the interests of protecting children.

A Memorandum of Understanding between the Irish and British governments regarding the sharing of information on sex offenders is being finalised. While this is a welcome development, the situation in the two jurisdictions is not directly comparable. The UK have a much more sophisticated method of monitoring and supervising the movement of sex offenders and people who are known to be a danger to children and others as their system includes hard information (of people convicted of sex offences) and soft information (of people suspected of posing a risk to children). The Irish system which has over 900 individuals listed on its sex offender register has inadequate monitoring mechanisms. There is even a loophole within the 2001 Sex Offenders Act, which means that the offenders do not have to comply with their supervision and cannot be brought back to court if they fail to co-operate. Barnardos recommends the closing of this loophole and a comprehensive monitoring of known sex offenders to be actively undertaken.

Barnardos recommends that a similar Memorandum of Understanding be developed between Ireland and other countries outlining protocols and procedures for dealing with sex offenders. At a minimum such protocols should be the same and operational at EU level given the ease of travel between EU countries.

Also in the UK, multi agency protection panels have been developed to assess and manage the risk presented by known convicted sexual and violent offenders living in the community. These panels involve key statutory agencies such as police and probation services as well as representative's from children's services, health and the local community. These panels assess each individual case when undertaking their risk assessment. Barnardos believes such a model should be explored in Ireland.

Conclusion

Bearing in mind the broad terms of reference of the Committee, Barnardos again calls on the Oireachtas Committee to ensure that the child's best interest be of paramount consideration when formulating any new policy or legislation.

Barnardos would welcome the opportunity to make a presentation to the Oireachtas Committee on any of the areas mentioned above.

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17) Travers, Olive (2001) 'Understanding and Treating Adult Perpetrators of Child Sexual Abuse, in *The End of Innocence - Child Sexual Abuse in Ireland*, (ed) Lalor, Kevin, Cork

18) Palmer, Tink (2006) *The Management of Sex Offenders in the UK*, unpublished