

Criminal Justice (Committal Reform) Bill

Written submission to the Justice Committee

14th January 2021

Introduction

The NSPCC is the leading children's charity fighting to prevent child abuse in the UK and Channel Islands. We help children who have been abused to rebuild their lives, protect those at risk, and find the best ways of preventing abuse from ever happening. To achieve our vision, we:

- create, deliver and evaluate services for children which are innovative, distinctive and demonstrate how to enhance child protection;
- provide advice and support to ensure that every child is listened to;
- campaign for changes to legislation, policy and practice to ensure the best protection for children; and
- inform and educate the public to change attitudes and behaviours.

The NSPCC in Northern Ireland broadly welcomes the opportunity to give evidence on the Criminal Justice (Committal Reform) Bill. We have a longstanding commitment to improving the experiences of young victims and witnesses in the criminal justice system. A delivery partner of the Department of Justice, our Young Witness Service offers specialist and skilled support to all young victims and witnesses in Northern Ireland before, during and after trial. This unique engagement makes the NSPCC well placed to comment on policy and law reform proposals.

Please note that this submission is limited to the key principals of the Bill which most directly affect young people.

EVERY CHILDHOOD IS WORTH FIGHTING FOR

Child victims and witnesses in the criminal justice system

Before getting to the detail of the Bill, we make clear that criminal justice inefficiency is one of our gravest concerns. The progress of cases involving child victims and witnesses through the system is punctuated by practices and processes that are not efficient and against the timely delivery of justice. A well-rehearsed fact reported in the Gillen Review is that the criminal justice system from beginning to end takes twice as long as the system in England and Wales. Most unconscionably, the greatest delay of all is in serious sexual offences involving children, where in 2017/18 cases took an average of 986 days to complete compared with 598 in 2014/15.¹ The COVID-19 pandemic has added further complications, with a high number of cases having to be postponed because of restrictions. The realities of delay and the consequences on complainants, the accused and their families is sometimes irreparable. In these instances, our Young Witness Service see first-hand the harmful impact and strain on children and families, sometimes occurring during crucial developmental and academic periods, and potentially impacting on their ability to manage and recover from their trauma. While we support this Bill, additional measures and resources are needed to expedite cases involving children, both to improve their experience and renew public confidence in the delivery of justice.

Brief commentary on the principles of the Bill

Clause 1-3

NSPCC support the intent of the Bill to abolish preliminary investigation and mixed committals process, which involve the calling of witnesses, oral evidence and associated cross-examination. We have tried to obtain data on the volume of children who have been requested to participate at committal hearings, but this information has not been available. Regardless of the frequency, many children who are witnesses in court will have experienced trauma and abuse and their wellbeing should be paramount. It is without doubt that a process that requires them to give evidence more than once during the

¹ [Gillen Review Report into the law and procedures in serious sexual offences in NI](#) (2019) at page 280.

progression of a case can be deeply traumatic. While it rarely happens, it is the experience of our Young Witness Service practitioners that preparing and giving oral evidence, particularly under cross-examination, both at committal and again at the Crown Court trial, is a significant burden for children and families.

In terms of defendants, we make clear that the protection and vindication of the rights of those who are processed through the criminal justice system should be paramount and we recognise that delays to justice also have implications for defendants and their right to a fair trial within a reasonable period.

On this issue, we are guided by the body of reports and reviews that have widely concluded that committal proceedings deliver little tangible gain. Specifically, the Audit Office in its 2018 'Speeding up Justice' report asserted that, *"the reform of committal is the Department's first move towards eradicating a judicial process which is widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses."*² Accordingly, in the Review of law and procedures in serious sexual offences (Gillen Review), Sir John Gillen argued that, *"the paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost of and stressful nature of such hearings. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage. I can see no justification, therefore, for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court."*³ Similarly, in its 2018 'Without Witness' report, the Criminal Justice Inspection Report concluded that, *"There are limited risks involved in abolishing the committal proceedings in these types of cases, as the vast majority will be transferred anyway. Direct committal would also reduce the anxiety for victims and should reduce delays in case progression."*⁴

² Northern Ireland Audit Office Report [Speeding up Justice: Avoidable Delay in the Criminal Justice System](#) (2018) at page 36.

³ [Gillen Review Report into the law and procedures in serious sexual offences in NI](#) (2019) at page 304.

⁴ 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: Criminal Justice Inspection Northern Ireland at page 70.

In summary, we do not consider that the arguments to retain oral evidence at committal stage outweigh the human cost of additional stress to victims and witnesses, nor benefit the accused. The Bill retains the current process of written evidence being given through the preliminary inquiry at the Magistrates' Court hearing and there will remain an application process to allow the defendant to challenge the evidence at an early stage in the Crown Court if the defence feels that the available evidence is insufficient.⁵

Clause 4

We broadly welcome the principal of this clause to expand the relevant offences that will be directly committed, over and above those in the Justice Act (Northern Ireland) 2015. In 2018, the Criminal Justice Inspection recommended that rape, serious sexual offences and child abuse offences should be added to the list of offences to be directly committed,⁶ and that was supported by the Gillen Review.⁷ We understand that this clause will deliver on these recommendations and we support the policy intention to get more cases to the Crown Court more quickly, therein reducing anxiety for young victims and witnesses and reducing delays in case progression.

Notwithstanding, committal proceedings have been reformed or discontinued in other jurisdictions, including in England and Wales and according to the Gillen Review, research shows that reforms to the committal process have not significantly reduced delays but rather shifted delays to the superior court.⁸ It is vital that there is no bottleneck in the system and that this Bill ensures that court proceedings are much more efficient than they are currently. We ask the Committee to seek assurances that this Bill will not shift delay to another part of the system.

⁵ s14 of the Justice Act (Northern Ireland) 2015 permits a person who is committed for trial on any charge, at any time after that person is served with copies of the documents containing the evidence on which the charges are based and before that person is arraigned, can apply orally or in writing to the Crown Court sitting at the specified place of the trial for the charge in the case to be dismissed. (Source: [Gillen Review Report into the law and procedures in serious sexual offences in NI](#) (2019) at page304.)

⁶ *Ibid.*, 71.

⁷ [Gillen Review Report into the law and procedures in serious sexual offences in NI](#) (2019) recommendation 110 at page 317.

⁸ *Ibid.*, 296.

We note the statement in the Explanatory and Financial Memorandum that the equality screening exercise carried out by the Department highlights that for youth defendants delay can have a greater negative impact compared to adult defendants as lengthy criminal proceedings can have a detrimental effect on individuals at a key developmental stage.⁹

While we agree entirely with this finding, it is not contained in the Department's Equality Screening Form of the Reform of Committal Proceedings,¹⁰ which states that no potential adverse impacts have been identified on any of the protected groups under section 75 of the Northern Ireland Act 1998. Where potential adverse impact on any of the protected groups is identified through the screening process, designated public bodies must either 'screen in' the policy for an equality impact assessment or 'screen out' the policy, putting mitigations in place or adopt an alternative policy. This is in line with the Equality Commission's revised Section 75, "A Guide for Public Authorities" April 2010¹¹ and the Department of Justice's approved Equality Scheme which states,

"If the screening concludes that the likely impact of a policy is 'minor' in respect of one or more of the equality of opportunity and/or good relations categories, we may on occasion decide to proceed without an equality impact assessment, depending on the policy. If an EQIA is not to be conducted, we will nonetheless consider measures that might mitigate the policy impact as well as alternative policies that might better achieve the promotion of equality of opportunity and/or good relations..."

If the screening concludes that the likely impact of a policy is 'major' in respect of one, or more, of the equality of opportunity and/or good relations categories, the policy will normally be subject to an EQIA."¹²

Despite the acknowledgement in the Explanatory and Financial Memorandum that adverse impact on the enjoyment of equality of opportunity, as a result of delay, is likely to be experienced by youth defendants, no information has been provided about the mitigations which the Department intends to introduce to reduce the impact of this on two of the protected section 75 groups, young people and males.

⁹ Para 40, [efm---criminal-justice-committal-reform-bill---as-introduced.pdf \(niassembly.gov.uk\)](#)

¹⁰ [Microsoft Word - Reform of committal proceedings Equality screening form.DOC \(archive-it.org\)](#)

¹¹ [untitled \(equalityni.org\)](#).

¹² Paras 4.10 – 4.13, [DOJ Equality Scheme \(justice-ni.gov.uk\)](#)

NSPCC recommends that the Department rescreens the policy, considers all available data and puts in place necessary mitigations. If the rescreening exercise finds that the policy is likely to have a major impact on equality of opportunity, the Department should carry out a comprehensive Equality Impact Assessment on the policy in line with its approved Equality Scheme, including direct consultation with young defendants.

We ask the Committee to explore the measures which are envisaged or in place to reduce lengthy delays and the impact of these on the enjoyment of equality of opportunity for youth defendants both within, and those that fall outside of, the scope of the Bill.