

EMAIL

Mervyn Storey, MLA
Chair
Committee for Justice
Room 242, Parliament Buildings
Stormont
Belfast BT4 3XX

Ref: 21/CJS/KY/161

17 November 2021

Dear Chair

Re: Justice (Sexual Offences and Trafficking Victims) Bill

I would like to again thank the Committee for the opportunity to provide oral evidence on the above Bill on 11 November 2021 and, as discussed, hope it will be helpful to provide further comment on my key concerns regarding the proposals. As noted yesterday, these concerns relate to two themes:

Ensuring provisions protect all children up to the age of 18 years

NICCY's written evidence of 24 September 2021 sets out the European and international obligations on government provide effective protections to children and young people up to the age of 18 years in all safeguarding measures, including legislative provisions. I remain of the view that this is not fully addressed within the Bill and note with particular concern that this can be seen in the grooming provisions of clause 2 which apply only to children up to 16 years and to the extension of qualifying offences for Sexual Offence Prevention Orders (SOPOs) to include abduction protections in clause 18 which apply only to certain groups of children.

In relation to any concerns Members may have that the proposals regarding grooming do not fully capture 'enticement', it may be useful to discuss this with PSNI who had previously raised concerns in this area. In regard to clause 18, we understand that the provision seeks to amend Schedule 5 of the Sexual Offences Act 2003 to ensure that offences in relation to Article 68 of the Children (Northern Ireland) Order 1995 are included and we note that Child Abduction (Northern Ireland) Order 1985 is already within the Schedule. However, we highlight that the provisions of Article 68 of the Children (Northern Ireland) Order are only afforded only to children who are in care, who are subject to an emergency protection order or to police protection and that the Child Abduction (Northern Ireland) Order 1985 applies only to children

up to the age of 16 and so reform is required in order to offer effective protection to all children up to 18. We understand that there is currently no planned work within the Department to address these concerns and would welcome further scrutiny from the Committee in these areas.

As discussed, our concerns regarding the unevenness in which legislative protections apply to different groups of children also relate to the defence of reasonable belief, with reference to clause 2 and clause 3a. We were supportive of the Department's proposal in 2019 to take steps to reverse the burden of proof and also their suggestion of limiting access to the defence where an individual, for example, has previously been convicted of a sexual offence against a child or is subject to a Risk of Sexual Harm Order.¹ While we understand that consideration is being given to progressing this work in the next mandate, we are disappointed this has not been brought forward to date and would welcome the Committee considering how measures to secure reform could be taken forward within the Bill.

Ensuring other relevant matters are addressed within the scope of the Bill

Abuse of trust: as stated in my written submission, I welcome the intention of the Minister to bring forward an amendment to strengthen legislation in this area but note that it must not be restricted only to sporting and faith settings but should apply to all relevant positions of trust, settings and activities.

Equal Protection: in referencing NICCY's commissioned research² on adult attitudes to physical punishment during the discussion yesterday, I note that Members may find it informative that the findings demonstrated that:

- 70% of adults thought that positive parenting was much more effective or a little more effective than physical punishment. This rose to 76% amongst parents.
- Just under one in four adults (24%) and **only 18% of parents stated that physical punishment was acceptable.**
- **63% of adults said they would definitely support or would tend to support changing the law** to give children the same protection from hitting and smacking that adults have. This indicates an increase in support from similar questions in earlier studies.

As reflected by the United Nation Committee on the Rights of the Child, the "... distinct

¹ Please see section 4, pp24-28 DoJ (2019) Review of the Law on Child Sexual Exploitation: [Consultation on child sexual exploitation law | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/consultation-on-child-sexual-exploitation-law)

Please see NICCY's advice on the Review of the law on Child Sexual Exploitation: [Review of the law on Child Sexual Exploitation \(niccy.org\)](https://www.niccy.org/review-of-the-law-on-child-sexual-exploitation)

² [Equal Protection - update \(niccy.org\)](https://www.niccy.org/equal-protection-update)

See also: [Changing Perceptions: Achieving Equal Protection for Children \(niccy.org\)](https://www.niccy.org/changing-perceptions-achieving-equal-protection-for-children)

nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.”³ I urge the Committee to give full consideration to ensuring law reform in relation to the physical punishment of children is addressed within the Bill.

Please do not hesitate to contact my office if you require any further information.

Yours sincerely

Koulla Yiasouma
Commissioner for Children and Young People

CC: Lorraine Ferguson, Department of Justice

³ UN Committee on the Rights of the Child (2006) General Comment 8: The rights of the child to protection from corporal punishment and other cruel or degrading forms of punishment, para 21.