

Correspondence from Sheila Simons

FAO The Justice Committee

Further to providing evidence to the Committee last week regarding the Justice Sexual Offences and Trafficking Victims Bill, The Committee raised a query in respect of CAWN's. I have attached information below and included an attachment to explain the purpose and workings of these notices for your consideration and hope you find the additional information is of assistance in your deliberations.

The Marshall Report is quite clear that DOJ should be bringing forward proposals for change, whilst the Leonard Report goes on to demonstrate the strength of the CAWNs whilst also outlining the frustration of all involved as to the continuing limitations.

LEGISLATIVE OVERVIEW

1. Child Abduction

Article 4 of the Child Abduction (NI) Order 1985 and Article 68 of the Children (NI) Order 1995 make it illegal for a person to take or detain any child under the age of 16 and under the age of 18 respectively, without a legal authority or reasonable excuse. Specifically, Article 68 of the Children (NI) Order 1995 includes reference to inducing, assisting or inciting a child to run away or stay away from the responsible person where they are the subject of a Care Order, an Emergency Protection Order or a Police Protection Order.

Key recommendation from Marshall inquiry makes it clear that DOJ should address this.

Key Recommendation 14: The DOJ should lead on a project to examine legislative issues highlighted in this report and bring forward proposals for change. These include:

1. a) Ensuring compliance with international standards by extending protection to children up to the age of 18, specifically, the Child Abduction (Northern Ireland) Order 1985 and the Sexual Offences (Northern Ireland) Order 2008.
2. b) Providing for a recovery order under the Child Abduction (Northern Ireland) Order 1985, on the model of that in section 69 of the Children (Northern Ireland) Order 1995.

The Leonard report makes clear reference to the issues found in Marshall inquiry and difficulties experienced by staff attempting to support young people over the age of 16 who are not subject to Care Orders.

Child Abduction Warning Notice's (CAWN) are seen as useful as well as Article 68 Children's Order letters from the Trust but there are limitations of the Article 68 only relating to children subject to Emergency Protection Order/ Care Order /Police protection. There is evidence of practitioners using Article 68 letter as a first warning and then, where relevant, serving a CAWN on the same person as a second warning. There is a perception that the CAWN carries more authority than Article 68 letter whereas both give the same warning to the person. There was evidence of consultation between PSNI and Trust CSE Lead as to which is the most appropriate warning notice should be undertaken and this is usually a CAWN as it is seen as a more robust response.

1. The respondents commented that the challenges which remain for interventions are:
 - o • Child Abduction Warning Notices cannot be used for young people aged 16 and 17 years unless subject to a Care Order,

It is also recommended a NICHE alert is also placed against individuals of concern such as those recipients of Child Abduction Warning Notices

There is an opportunity before the Committee to close this gap and ensure that CAWN's can be sought for all children under the age of 18 - this would afford young people not subject to a statutory care order between the ages of 16 – 18yrs to be given added protection which is not currently afforded to them and I believe this is at a cost to these young people and to the agencies trying to protect them.

Your sincerely

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Foot note: The Marshall Report published on 18/11/2014 – looks at how child exploitation(CSE) takes place in NI

The Leonard Report – Child Protection/ Safeguarding in specific circumstances – Child Sexual Exploitation (2020) commissioned by the SBNI

CHILD ABDUCTION WARNING NOTICE (CAWN)

WHAT IS A CAWN

CAWN's are a tactic used by police and social care to protect children from people that may place them at risk. Effectively they are warning letters to those that are believed to be involved in harbouring children, which is the reason that until recently they were commonly known as 'Harbourers Warnings'.

They are relevant to the following criminal offences:

Article 4 of the Child Abduction (NI) Order 1985

Article 68 of the Children (NI) Order 1995

Therefore, there are two types of CAWN to reflect the two offences above: Article 4 - for a child under 16, where the more serious offence of Child Abduction applies

Article 68 - for the alternative offence involving a child over 16 years and who is subject to a Full Care Order or emergency protection (Emergency Protection Order or Police Protection).

WHAT IS THE PURPOSE OF A CAWN

CAWN's are aimed at combatting those incidents where young people find themselves in potentially exploitative situations, either through their associations or by forming inappropriate relationships. The issuing of a CAWN is a valuable safeguarding measure, particularly relevant to children who regularly go missing, who are at risk of sexual exploitation, or where a combination of missing and CSE are present. They are a preventative tool alerting the respondent to the fact that the authorities are aware of their involvement with the child. A CAWN should be seen as the first stage in a potential prosecution for either the Art 4 or Art 68 offences. It should provide strong evidence against any defence the offender might raise, effectively negating any claim that they didn't know their actions amounted to a criminal offence.

WHAT DOES A CAWN CONTAIN?

The wording contained in CAWNs can vary slightly between police and local authority areas. Regardless of any differences in text, the CAWN should always cover the following points:

For Article 4

- that the parent/carer of the child has **absolutely banned outright with no exceptions**, the child from associating with the respondent.
- that the respondent may commit an offence under Article 4 of the Child Abduction (NI) Order 1985, if without lawful authority or reasonable excuse they take or detain the child: -
 1. as to remove him/her from lawful control of any person having lawful control of the child;
 2. or b) so as to keep him out of the lawful control of any person entitled to lawful control of the child.
- that the respondent must **not at any time** do certain actions which would bring them into contact with the child. CAWNs should give a general list (non-exhaustive) of what actions might lead to a breach of the CAWN.
- outline the penalties if found guilty of Article 4.
- advise that the CAWN remains in force whilst the child remains under 16.

Article 68

- that the responsible person who has care of the child has **absolutely banned outright with no exceptions**, the child from associating with the respondent.
- that the respondent may commit an offence under Article 68 Children (NI) Order 1985 if without lawful authority or reasonable excuse they: -
 1. take the child away from the responsible person
 2. keep the child away from the responsible person
 3. induce, assist or incite the child to run away or stay away from the responsible person.
- that the respondent must **not at any time** do certain actions which would bring them into contact with the child. CAWNs should give a general list (non-exhaustive) of what actions might lead to a breach of the CAWN.
- outline the penalties if found guilty of Article 68.

Examples of what might constitute actions that might lead to a breach of the CAWN are:

- allowing the child to enter or stay at any address which the respondent is at, including any workplace or business premises
- allowing the child to enter or travel in any vehicle they own, has control over or are travelling in
- meeting with the child or allow them to remain in their presence

The CAWN should also carry some direction to the respondent, as to what they should do if the child approaches them or turns up at an address they occupy or at. This direction should instruct them to ignore/avoid the child and make it clear that they must not be able to speak to or associate with them. If the child has presented themselves at premises, then they should refuse them entry and ask the child to leave. If the child refuses they should be directed to contact the police on 101.

The CAWN should also include:

- full name, date of birth and age of the child
- the local authority/police area
- name of the responsible person
- full name, date of birth and address of the respondent
- name of the officer serving the notice
- the time and date the notice was served
- the signature of the respondent and the time and date they accepted receipt (please note they can refuse to sign or accept the notice)

WHEN SHOULD A CAWN BE CONSIDERED

A CAWN can be issued on the first occasion a child is found at any specific location, if the circumstances are such that there is reason to believe or suspect that the offences of Art 4 or Art 68 are present, or where there are safeguarding issues that give significant cause for concern.

However, there are many occasions when an adult will take a child into their address in good faith. In these circumstances providing advice to the adult will be the best course of action. In most cases the intent or approach of the harbourer will be key.

Example: If a missing child has been found on 2 or more occasions in the company of an adult, who has made no attempt to inform someone responsible of the child's location, then serving them with a CAWN should be considered, to prevent further contact.

Where there is more than one person believed to harbouring the child then a separate notice should be served on each person. A key point note is that although there is no age limit in this legislation, it is generally not appropriate to serve a CAWN on a child or young person under the age of 18 years.

WOULDN'T IT BE BEST TO WARN THE SUSPECT BEFORE ISSUING THE CAWN

Police officers may use their discretion as to whether a person should be warned in the first instance. This may take the form of a 'Disruption Letter' or verbally. Where there are serious safeguarding issues such as the suggestion of sexual exploitation, but no direct evidence of criminal offences, then it would be best practice to move straight to a CAWN. Where police advise or warn a person, then this should be recorded on police intelligence and safeguarding systems. The circumstances surrounding the verbal or written warning should be shared through the normal pathway with social care. Where the child is a Looked After Child, then the circumstances also need to be communicated directly to the child's social worker.

WHO SHOULD BE INVOLVED IN THE PROCESS?

A number of individuals should be involved when deciding whether a CAWN should be served on someone suspected of harbouring a child. Usually CAWN's will be considered in a case where the child is already known to, or is an open case to Children's Social Care (CSC). Therefore, generally CAWN's will be part of a wider discussion at either a missing or sexual exploitation strategy meeting relating to the child. On rare occasions, the child won't be known to CSC and police may take the decision to serve a notice quickly. In these cases, police should notify CSC that a CAWN has been issued via the normal pathway. This should also contain details of the safeguarding concerns relating to the child.

To issue a CAWN an evidential statement is required. Who provides this statement will be dependent on the circumstance?

- Children under 16 – statement from one of the parents (whoever has full parental responsibility), a Guardian, or where parental responsibility is shared with CSC, a Social Worker.
- Children under 18 in Local Authority care (S31) – A responsible person, usually the Social Worker acting on behalf of the authority (preferably the designated Social Worker).
- Children under 18 in Police Protection - A responsible person, either a police officer or a Social Worker.

WHAT SHOULD THE CHILD BE TOLD?

The person who has lawful control (parental responsibility) should inform the child that they do not have permission to communicate, associate or be in the company of the suspected harbourer in any way, at any time. How this message is communicated to the child will depend on the relationship a person has with the young person, but the child must be in no doubt that this is what the parent/guardian/responsible person wants.

WHO SERVES THE CAWN ON THE SUSPECT?

A police officer is responsible for serving the CAWN. The officer should ask the suspect to confirm their identity and then inform them of the parent/carer's wishes. The notice should be read out and the suspect asked to confirm that they understand what they have been told. The wording of the warning notice should not be deviated from. This is so that the respondent cannot later claim to

have not fully understood what they were being told. The officer should make it abundantly clear that the responsibility for complying with the notice lays with them and not the child.

Photographs – It is extremely important that the respondent is absolutely clear which child is being referred to in the notice. A recent good quality photograph of the child should be obtained from the parent/guardian or sourced in other ways. The existence of the photograph should be referenced on the notice. The photograph must be shown to the respondent at the point the notice is served. The police officer serving the notice should include the photograph as an exhibit in their own statement. The photograph should **never** be left with the respondent.

WHERE ARE THE DETAILS OF THE CAWN KEPT?

Police forces in the UK use differing systems to record crime, criminal intelligence and safeguarding information. There should be a specific system in place in each force so that information about the CAWN is readily available to officers. The existence of the CAWN should have been shared with social care so that everyone is fully sighted around the existence of the notice, who the respondent is and what safeguarding risks surround both the child and the suspect. Once a notice has been served the details should be added to the relevant police system and a marker should then be created on the Police National Computer (PNC). This will alert police and other law enforcement agencies across the UK to the existence of the CAWN. There should be **two** PNC markers, one for the child indicating that the child is at risk from the suspect, the other for the respondent highlighting the risk they pose to the child.

In NI, The Police advise PBNI when a CAWN is served on an individual subject to statutory supervision.

WHAT HAPPENS IF A SUSPECT IS IN BREACH OF A CAWN?

CAWNs are not covered by any legislative statute. Therefore, the actual breach of the notice is **NOT** a criminal offence. The power to deal with the suspect where a breach is found to have occurred, comes from the relevant legislation – Article 4 of the Child Abduction (NI) Order 1985 or Article 68 Children (NI) Order 1995. In other words, the suspect would be arrested for the actual offences of either child abduction (Art 4) or taking, keeping or encouraging a child to run away from lawful care or police protection (Art 68). The suspect may have also committed other criminal offences.

If at the conclusion of the investigation police believe they have sufficient evidence to charge the suspect with the Art 4 Child Abduction offence, then they must seek authority from the CPS to prosecute. For the Art 68 offence, the decision to charge can be made by a police supervisor trained in reviewing evidential case files.

HOW LONG DOES A CAWN LAST

Whilst a CAWN can remain in place until the child turns 16 (for Section Art 4) and 18 (for young people under care orders), they should still be reviewed on a regular basis to ensure that they are still proportionate, relevant and necessary (Human Rights Act 1998).