

Mr Paul Givan MLA
Committee Chairperson
Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX.

25th September 2020

Dear Mr Givan

NSPCC NI is grateful for the opportunity to provide advice to the Committee on the proposed amendment to section 20 of the Children and Young Person's Act 1968 and proposed reduction of the age threshold for the parental responsibility exception in the Domestic Abuse and Family Proceedings Bill from 18 to 16.

We understand the policy intention of these proposed amendments and commend the desire to afford protection to all children from non-physical, as well as physical abuse. NSPCC believes that it is wholly appropriate that there is a recognition in the law that physical abuse is not the only form of harm.

Having considered the proposed amendments, it is our understanding that where a child under 16 suffers harm, caused by someone with parental responsibility for them who is aged over 16, "physical or otherwise"¹, with "otherwise" being intended to include non-physical abuse, it is intended that legal recourse will be sought under section 20 of the Children and Young Person's Act 1968.

In the case of 16 and 17 year old children, it is proposed to remove the parental responsibility exception at clause 11 of the Bill so that 16 and 17 year old children would be protected under the Bill from physical and non-physical ill-treatment caused by someone with parental responsibility for them. It is also intended to reduce the age threshold at clause 17 to 16 years to ensure that the exception regarding aggravation of the offence aligns with the newly proposed age threshold. We understand that the standard offence thresholds would apply in

¹ Proposed amendment to section 20 of the Children and Young Person's Act 1968

the case of 16 and 17 year old children so that the behaviour would have to be considered abusive, be viewed as such by a reasonable person and occur on two or more occasions.

NSPCC NI supports the policy intention of these amendments but believes that this could also be more easily achieved through removing the parental responsibility exception from the Bill in its entirety, which would afford children of all ages protection under the Bill from physical and non-physical ill-treatment caused by someone with parental responsibility for them. If the proposed amendments are made, the parental responsibility exception will only prevent legal recourse being sought under the Domestic Abuse and Family Proceedings Bill for children under 16 who suffer physical and non-physical ill-treatment caused by someone with parental responsibility for them. Clause 11 then becomes is a technical exception as legal recourse can still be sought under section 20 of the Children and Young Person's Act 1968.

NSPCC believes that the removal of the parental responsibility exception from the Bill entirely would be preferable to the amendments being proposed for a number of reasons outlined below.

1. It would reduce legal complexity by including protections for children of all ages in one piece of primary legislation;
2. The same legal thresholds would apply for the protection of children of all ages;
3. The reasonable person test in the Domestic Abuse and Family Proceedings Bill provides a legal safeguard against unnecessary prosecutions; and
4. While NSPCC does not wish to see the criminalisation of parents as we do not believe that in the majority of cases this will be in the best interests of the child or children involved, it is important that in extreme cases where criminalisation is deemed necessary, that maximum sentences which can be imposed are the same for cases involving children of all ages. If the amendments are to proceed as proposed, the maximum sentence for an offence against a child under the age of 16 under section 20 of the Children and Young Person's Act 1968 is five years imprisonment, whereas the maximum sentence for an offence against a 16 and 17 year old child under the Domestic Abuse and Family Proceedings Bill will be fourteen years imprisonment on conviction in the Crown Court. This could lead to a situation where offences against two children of different ages attract very different sentences, suggesting that the abuse of a child under 16 is legally less serious and should carry a lesser penalty than abuse of a child over 16.

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If the proposed amendment to section 20 of the Children and Young Person's Act 1968 and proposed reduction of the age threshold for the parental responsibility exception in the Domestic Abuse and Family Proceedings Bill from 18 to 16 are made we believe that statutory Guidance on section 20 of the Children and Young Person's Act 1968 will be required to provide clarity on what is meant by, "...physical **or otherwise**" (our emphasis) to avoid unnecessary case law. In addition, given the paramountcy of the best interests of the child, we believe that the criminalisation of parents should only be considered as a last resort. We would support clarity on this also being provided in the statutory Guidance to the Domestic Abuse and Family Proceedings Act and statutory Guidance on section 20 of the Children and Young Person's Act 1968.

While NSPCC NI understands that prosecution of parents will in some cases be required, we do not believe that the criminalisation of parents will be the most appropriate response for the recovery of children and families in the majority of cases. NSPCC advocates that in most cases, a child welfare approach should be taken where children suffer ill-treatment by a parent or carer, whether physical or non-physical. This will ensure that there is not unnecessary criminalisation of parents and avoids a punitive criminal justice response, except in the most serious of cases.

At the heart of a child welfare approach is early intervention and family support, allowing families to stay together in the best interests of children and fulfilling the child's right to be raised within their family, where this is safe. It is NSPCC's experience that, with the right support, children affected by domestic abuse can recover and go on to lead happy and healthy lives. The provision of sufficient and specialist support services will be key to ensuring that the damage caused to children by abuse carried out by their parent or carer is minimised.² This is particularly pressing in the context of the COVID-19 pandemic, when there will almost certainly be increased need and demand. We therefore wish to reiterate the importance of the introduction of a statutory duty on Health and Social Care Trusts to make available and deliver specialist support services for all adult and child victims, as well as perpetrators and children exhibiting abusive behaviours, regardless of where they live. As already stated in NSPCC's evidence to the Committee on the Bill, given the centrality of the provision of sufficient and specialist support to recovery for child victims of abuse, we believe such a duty should be included in the Bill.

² Children affected by domestic abuse need support to process their distinct experiences, and to develop an understanding of healthy relationships. Specialist children's services, like Children's Independent Domestic Violence Advisors in England emotional and practical support, reduce the impact of domestic abuse and improve children's safety and health outcomes. See [Safe Lives \(2014\), In plain sight: Effective help for children exposed to domestic abuse.](#)

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We hope that our comments will be useful to the Committee in its consideration of the proposed amendment to section 20 of the Children and Young Person's Act 1968 and proposed reduction of the age threshold for the parental responsibility exception in the Domestic Abuse and Family Proceedings Bill from 18 to 16. If the Committee requires clarification or further information on anything raised in this submission, please do not hesitate to contact Natalie Whelehan, Policy and Public Affairs Manager, NSPCC Northern Ireland.

Yours sincerely,



Neil Anderson
National Head, NSPCC

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