

Access to Justice for Children in the NI CJS

Submission to the Access to Justice Review

February 2011

Background

The NSPCC is the lead voluntary child protection agency in Northern Ireland and is unique among charities, with statutory powers by virtue of Royal Charter and the Children (NI) Order 1995. In addition our authorised status is recognised in the Criminal Justice (NI) Order 2008 in relation to public protection arrangements and in the new Safeguarding Board for Northern Ireland Bill. Our mission is to end cruelty to children. We aim to achieve this through the provision of direct services to children and young people, work within the safeguarding system and through the provision of a range of training, research, policy and public affairs initiatives designed to change the way we all think and behave in relation to the needs of children and protecting children in particular.

The Society employs approximately 150 staff in Northern Ireland across a wide range of projects and services: recovery and therapeutic work, family support services, assessment work, sexually harmful behavior, young witness support, Child Protection in Sport and ChildLine. The NSPCC has also been providing a young witness support service in Northern Ireland since 1999. The service is almost wholly funded by the Northern Ireland Office with additional funding provided by the NSPCC.

The NSPCC provides training, consultancy, research and policy development work and is represented on all child protection fora and bodies. The Society is a member of Public Protection Arrangements Northern Ireland (PPANI) and the Victim and Witness Task Force of the Criminal Justice Board. The NSPCC has provided the chair for the group that has produced a Northern Ireland version of *Achieving Best Evidence*.

Together these services and functions have a significant interface with the justice system and enable us to have a significant insight into the experiences of children and young people. While we are aware that the remit of the Review Team focuses primarily on legal aid provision, we feel there is a wide range of additional issues impacting on how children and young people access justice in NI based on our policy and practice experiences and the available evidence. Section 1 of this paper therefore sets out a range of NSPCC positions relating to child victims' experience of the Criminal Justice System and the legislative changes needed to better protect children and remove inequities between NI and other UK jurisdictions. Section 2 highlights our thinking on the key issues faced by children in civil law cases, though it should be noted this is still developmental with further work planned in 2011.

SECTION 1: CRIMINAL LAW

Provision of victim information to facilitate planning and monitoring

The NSPCC has recently established an information sharing protocol with PSNI which gives NSPCC annually updated access to all data relating to recorded crimes against the person involving children and victims in Northern Ireland. Analysis of this data has highlighted major gaps in the information available on victims who report violent and sexual crimes to the police. Information on the age of the alleged offender, their gender and their relationship to the victim is only available for 'detected' cases and is not routinely collected in a substantial proportion of cases (roughly 80% of sexual crimes against children and 75% of violent crimes). Effectively this means that basic information relating to the nature of crime reported by children and the extent to which certain groups may be under-represented is unknown. This makes strategic planning and the monitoring of victims' access to justice impossible. The recent Policing Board thematic inquiry into domestic violence highlighted similar problems in relation to domestic incidents and crimes, pointing out that without such, the true picture of domestic abuse in NI remains cloudy at best.

Additionally, since changes to the Home Office Counting Rules in 2006, available information on victims of crime has actually decreased. Previously recorded crime counted victim withdrawal as a non-sanction form of detection. Since 2006 this is no longer counted and now detected cases are ostensibly those cases in which an offender has been charged or where they have been received a summons. Cases can remain undetected for a variety of reasons; there is no identifiable offender, the victim denies or retracts allegation or refuses to co-operate with the initial investigation. Currently there is no overview of the key reasons why cases are not detected and to what extent victims are choosing not to engage with the CJS. More detailed information would be valuable in monitoring trends, for example highlighting police districts which have very high rates of withdrawal, allegation retraction etc.

Our view is that the PSNI should routinely collect data on perpetrator age, gender, and relationship to the victim for all recorded crimes against the person involving child victims. In cases of domestic crime the presence of children should also be recorded.

NSPCC would also recommend that recorded crime statistics be expanded to include more specific details on the reasons for a case not being detected.

Attrition in the Criminal Justice System

There is widespread concern within the criminal justice and child protection systems about the disparity between the number of reported cases of child abuse and the small number of cases which lead to a trial and conviction. The NSPCC has been seeking to understand the factors which lead to cases not proceeding at various stages of the criminal justice process.. Analysis of police data on sexual offences recorded against child victims, notably between 2001-2006 in Northern Ireland (Bunting, 2009), has increased our understanding of attrition¹. This analysis showed that:

- Only one in five recorded crimes result in an individual being charged, cautioned, or summonsed to court for the offence (detected by formal sanction);
- The overall detection rate for crimes was 51%;
- In 15% of recorded crimes the victim (or family) declined to prosecute; and
- In one in ten recorded crime cases the police/PPS decided not to proceed.

It also revealed significant variation in case outcomes depending on the District Command Unit in which the crime was recorded with detection by formal sanction rates varying between 20% and 77%. Although variations in case characteristics of cases reported in individual areas will account for some of this difference it points to the need for further work to identify the role different attitudes and practices might play in this variation in attrition.

Analysis of data collected by NSPCC's Young Witness Service reveals only 10% of sexual offence referrals to the YWS involved children under 10, compared with more than 30% of recorded sexual offences, further highlighting that younger children group are seriously under-represented at the court stage of the CJS. The YWS also reports that very few children with learning or physical disabilities are referred to the service.

English research also suggests that the poor conduct of Achieving Best Evidence (ABE) interviews may be linked to attrition rates. NSPCC is planning to conduct a pilot project examining the conduct of 20 ABE interviews in NI to assess the quality of interviews conducted here and the extent to which they follow guidance. The findings from this study can usefully feed into the roll out of the revised ABE guidance in 2011.

However, overall, there remains a need for more in-depth research to complement work already done on delay by the Criminal Justice Board and the Criminal Justice Inspectorate with the aim of supporting child victims and building confidence in the CJS.

¹ It should be noted that since the time of this analysis Home Office Counting Rules have changed and victim withdrawal is no longer counted as a detected case. Additionally the PPS/Police decision not to proceed category is now a PPS decision only

The Department of Justice should consider commissioning research into attrition within the criminal justice system with a particular focus on sexual offences and offences against children. This would better inform policy and service development in this area.

Measures in the CJS should focus on dealing with attrition at three key points at reporting, PPS/Police interface and in courts.

Delay

In 2006 the Criminal Justice Inspectorate for Northern Ireland published a thematic inspection of delay in the processing of criminal cases in Northern Ireland. It recognised that delay was a major issue in cases involving child witnesses and defendants. The Delays Action Team was formed to take forward a variety of wide ranging recommendations and, despite welcome progress in the youth courts, delay continues to be highlighted as a on-going problem. Indeed, research commissioned jointly by NSPCC and the Nuffield Foundation (Plotnikoff and Woolfson, 2009) revealed a concerning lack of prioritisation of young witness cases in Northern Ireland compared with England. From the 15 interviews conducted with young witnesses in 2008 in Northern Ireland, the researchers noted that:

- Only 42% of cases went ahead on the first scheduled date;
- There was an average waiting time before giving evidence of 6.3 hours for those young people attending magistrates' or youth court and 12.7 hours for those who gave evidence in the Crown Court;
- In the Crown Court in Northern Ireland the average waiting time for young witnesses between reporting offences and trial was around 20 months compared with 13 months in England and Wales;
- In magistrates and youth courts in Northern Ireland the average time for young witnesses between reporting offences and trial was 13 months compared with 7 months in England and Wales; and
- Only 33% of young witnesses in Northern Ireland gave evidence on the first day of their attendance at court.

DoJ is currently funding NSPCC and QUB to replicate this work in NI with a larger sample to identify the key issues and barriers for young witnesses. However, we already know from our practice base the devastating impact delays in the system can have. Practitioners in therapeutic services in Northern Ireland have identified a series of cases in which delays in the CJS impact adversely on young victims. Of particular concern is the consequent delay in the initiation of therapeutic work with vulnerable individuals in cases involving children. This is particularly true in cases involving sexual offences against children which may be 12 -18 months in the court system, a long time to delay therapeutic work. These issues were highlighted particularly in the 'H' Case Management Review within the former Northern and Southern Area Child Protection Committees where a 14 year old young victim took her own life 8 days after sentencing (allegations were made in May 2004, trial took

place in January 2007 with sentencing taking place in April 2007 – just short of three years from start to finish).

Delays, lack of contact and failures in updating victims and their families on the part of Police and PPS remain on-going concerns in many cases. This lack of information leaves victims and families feeling disbelieved and forgotten. Indeed, from our experience we would take the view that delay in the system is, in itself, a major cause of attrition with victims choosing to withdraw rather than be subjected to continued uncertainty and the consequent stress this puts on individuals and families. NSPCC's therapeutic services often act as a bridging service between victims, their families and the CJS enabling them to cope with the situation. It seems this is a key area for future service development if victims are to remain engaged with the CJS as a whole.

There is a need to engage the judiciary, Court Service, PPS, the Criminal Bar and the Law Society to examine how the business management of such cases could be improved in order to deliver justice more expeditiously.

Independent Sexual Violence Advisors or equivalents should be introduced in NI to support children and their families who have been victims of crime. As well as providing practical and emotional support this would enable young people to be signposted to appropriate therapeutic services. Adapting the Victim Support model for use with children, where Victim Support are notified of all crimes involving adults, would also allow support to be provided at the earliest stage possible and, potentially, facilitate young people remaining engaged with the CJS process.

Legal and Judicial Training

The NSPCC welcomes the approach taken by the PPS to the recruitment and training of their own staff and the retention of independent counsel. However, there is considerable resistance in the legal community and within the judiciary in Northern Ireland to the concept of accreditation to work with children in criminal courts. This creates a divergence between the criminal courts and the civil courts when dealing with children which serves neither the welfare of children nor the interests of justice. It reinforces the cross-examination culture which tends to treat children as 'mini-adults' and fails to achieve best evidence from children. Clear, coherent and consistent evidence from young witnesses is in the best interests of victims, defendants, the courts and society in general.

Research by Plotnikoff and Woolfson which has included young witnesses in Northern Ireland has consistently demonstrated that inappropriate questioning of young witnesses, both in terms of style and content, is a major issue for children and their parents.

The NSPCC continues to hold the view that there should be a system of accreditation for lawyers and judges dealing with young witnesses.

Sexually Harmful Behaviour

We have been concerned for some time about the justice pathways for children who sexually abuse others. Under Co-operating to Safeguard Children (DHSSPS, 2003) and amended regional ACPC guidance they should be treated as children in need of protection and subject to multi-agency assessment. However, the actual way children enter treatment, are diverted through young justice or end up getting prosecuted is far from clear. It is a very complicated policy area cross-cutting a number of NI government departments and reserved matters and in this regard we have had a number of roundtable discussions in the past with other agencies and the Public Prosecution Service (PPS). While there has been some recognition by the agencies of the challenges involved progress has been very slow.

This complex issue is also bounded by a range of policy documents, sexual offences legislation, sex offender registration and notification arrangements and new vetting and barring arrangements and has an interface with Public Protection Arrangements Northern Ireland and Youth Conferencing.

Key issues include:

- The need for agreed policy context in dealing with these young people across organisations particularly around youth justice;
- Uniform training and awareness-raising for professional groups on SHB;
- Improved interagency information-sharing and protocols. The development of a PPS prosecution protocol setting out the principles of court interventions with these young people;
- Agreed models of assessment and treatment and recognition of approaches and outcomes by the judiciary; and
- Improved statistical information on this cohort including information on outcomes.

There needs to be a common understanding between agencies about treatment of young people who sexually offend and a common pathways for treatment, diversion and prosecution.

PPS should develop a prosecution protocol to reflect some of the issues.

Public Protection arrangements

NI has not yet benefited from the introduction of Violent Offender Orders (VOO) contained in the Criminal Justice and Immigration Act 2008 http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_12. The Act makes provision for VOOs to be granted for certain qualifying offenders, bringing with it a notification arrangement very similar to sex offender notification. While violent

offenders are now managed within public protection arrangements in Northern Ireland, agencies are largely powerless when an individual is outside a licence or probation order. This leaves children and young people at risk of violent assault and we would like to see **implementation of Violent Offender Orders addressed in the next Criminal Justice Bill.**

NI, ROI and Scotland have all started using the Harris Dynamic Risk Assessment model. It would be useful for E&W to adopt a similar approach. Equally, NI is also assessing and risk managing Risk of Sexual Harm Orders (RSHOs) while MAPPA do not and we should be calling for this to be adopted across the UK in terms of approach. NI is also intending to reform the Sexual Offences Act and make it a requirement for a qualifying sex offender entering NI from outside the UK to register with the police. This will largely replace the need for notification orders and bring NI practice into line with what happens in ROI. **This sensible development should be called for in other UK jurisdictions.**

Domestic Violence Protection Orders

The Home Office have announced the commencement of Domestic Violence Protection Orders (DVPOs) pilots in England. These seem to complement existing legal and criminal remedies here and **NSPCC is of the view that these should be taken forward in Northern Ireland.**

Section 2: Civil Law

Delay

There is no doubt that delay remains an issue in the civil court side in Children Order proceedings. The average disposal times for private law cases in 2009 was 43 weeks in the High Court, 44 weeks in the family care centres and 24 weeks in the family proceedings courts.

This is compounded by poor court timetabling i.e. cases all starting at 10.30. Teams who provide court reports and have to attend hearing have complained of the time court work involves because of this issue and the inconvenience for children and family who may have to attend. **Separating sessions into morning and afternoon would reduce burdens greatly.**

Representation

We are not aware of guidance or standard setting around the issue of expert witnesses in Children and Family Proceedings cases. The lack of independent representation for children in private family law proceedings (other than the Official Solicitor) is a problem in ensuring a child's perspective.

Private Family law- article 8 cases

Current systems do not encourage parents and legal advisors to find solutions to contact and residence disputes. Often cases are simply referred to social services for a report and NSPCC on occasions provides independent advice and assistance. Some very complex cases require social services intervention and assessment but the volume of cases can be hard to manage. Courts Service should examine the possibility of requiring couples to have some form of mediation or at minimum processes which require solicitors to show evidence of attempts to resolve disputes.

Civil court processes

While there have been developments to improve court processes and systems for those who are witnesses and victims there may be a case for systems change and a move to a more inquisitorial approach akin to the Scottish Panel model. This is something that NSPCC intends to research.

Contact issues in DV cases

Recent research in Northern Ireland has noted that “the fields of child protection and domestic violence have traditionally been estranged (Devaney , 2008) However, the NI Executive has been working on developing strategies on tackling sexual violence and domestic violence which are aimed at ensuring both adult and child victims receive appropriate support. It is the view of the NSPCC that domestic abuse should not be considered in isolation from other personal and family issues that may be the subject of risk assessments and this is of particular relevance to the civil court process.

NSPCC has a number of specialist Domestic Abuse teams and provides a range of services to families including work with non-adjudicated males. As part of this service, NSPCC provides court welfare reports in contact cases where there has been domestic abuse.

It is our experience that the court makes a presumption that contact is in the child's best interests irrespective of the evidence of domestic abuse. Such decisions in our experience appear to demonstrate limited insight by the court into the dangers to children linked to ongoing power and control issues during contact. We would like to see a drive towards developing an assessment model of such cases which takes into consideration the dynamics of Domestic Abuse which could inform and assist the court in terms of decision making in the best interests of the child.

Alternative dispute resolution

The Access to Justice consultation paper suggests mediation as a form of alternative dispute resolution and as a means of reducing delay. It is our view that this has to be balanced with ensuring the process of mediation is not misused by abusive/controlling partners who use the court process to further exert power over

their partners and children. For example the use of mediation in domestic violence cases may not be appropriate as it could lead to the person being intimidated into agreeing to conditions that are not appropriate and could be harmful further down the road.

Payment of legal aid

The recent announcement by the Minister for Justice to allow all applicants for non-molestation orders to access legal aid in order to ensure speedy access to justice is to be welcomed as is the development in England of a pilot to explore the use of DV Protection Orders which enable senior police officers to remove a male offender from the home in a DV situation which removes the need for ex-parte non-molestation orders. The outcome of the pilots in England will hopefully further inform policy in relation to legal aid provisions for such cases in NI.

It is possible that proposals to change how Legal Aid is allocated (with possible cap) may lead to an increase in personal representation in courts where parties to disputes cannot afford to engage legal representation.

There is a fine balance to be struck in ensuring access to justice through the use of the legal aid budget does not result in greater delays as individuals in private law cases clog up the courts through lack of knowledge of court processes.

Children's voices

In giving evidence recently to the House of Commons Justice Committee on the operation of family courts in England and Wales, NSPCC argued that children who are of appropriate developmental age should have greater avenues in care proceedings in which to have their voices and views heard. The NSPCC's 'Your shout too!' report showed that 40 per cent of children said they would like an opportunity to be able to put forward their views in family court proceedings.

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Annex 1

Offences against the person and sexual offences recorded against children and young people under 18 years

Offences against the person	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Murder, manslaughter and infanticide	1	4	4	4	1	7	3
Wounding with intent, GBH with intent, wounding and GBH	160	130	150	125	158	149	193
AOABH	721	3012	3076	3008	3098	2502	2410
Aggravated assault and common assault	3936	1867	1795	1825	1912	1817	1816
Cruelty to a child	49	75	31	25	38	25	68
Child abduction	60	37	43	64	78	54	35
Substantive offences	7	1	1	11	13	12	10
Attempted offences	53	36	42	53	65	42	25
Other offences against the person	222	201	269	346	338	301	349
Total	5149	5326	5368	5397	5623	4855	4874

Sexual offences	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Rape (including attempts)	164	170	166	154	178	183	207
Sexual assaults/Sexual activity	528	662	554	611	599	649	806
Exposure	144	172	188	88	61	89	51
Other sexual offences	15	8	20	15	17	21	20
Total	851	1012	928	868	855	942	1084

Source: Central Statistics Unit, PSNI

Offences against the person and sexual offences involving victims under the age of 18 2008/09 by age

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Offences against the person	47	28	21	42	37	36	63	86	92	147	165	249	362	494	581	678	818	928
Murder, attempted murder, threat or conspiracy to murder, manslaughter and infanticide	5	3	1	1	1	2	0	1	3	3	0	6	5	17	25	20	27	51
Wounding with intent, GBH with intent, wounding and GBH	7	2	0	0	0	3	0	0	2	0	0	4	5	9	19	25	40	77
AOABH, Aggravated assault and common assault	19	16	16	33	30	24	50	74	80	137	155	221	339	443	509	599	719	762
Other offences against the person	16	7	4	8	6	7	13	11	7	7	10	18	13	25	28	34	32	38
Sexual offences	5	7	12	19	46	36	51	61	58	42	44	45	70	94	136	171	137	50
Rape (including attempts)	1	2	0	3	7	7	8	17	10	9	6	8	8	18	23	38	22	20
Sexual assaults/Sexual activity	3	3	11	15	39	29	40	43	47	31	32	30	53	66	108	122	109	25
Exposure	1	0	1	1	0	0	1	1	1	2	4	5	8	7	3	9	4	3
Other sexual offences	0	2	0	0	0	0	2	0	0	0	2	2	1	3	2	2	2	2

Source: Central Statistics Unit, PSNI