

Response to Scottish Government Consultation

Clinical Pathway for Children and Young people who have disclosed sexual abuse

Introduction

The UN Approach to Justice for Children¹ outlines children's rights in relation to the justice system. These rights apply both to children in conflict with the law and those who are victims of crimes. They are grounded in the United Nations Convention on the Rights of the Child (UNCRC) and its principles of:

- prioritising the best interests of the child;
- ensuring no child is discriminated against;
- recognising every child's right to life and to development; and
- advancing the right of the child to express their views and have them given due weight.

Article 34 of the UNCRC requires that states protect children from all forms of sexual exploitation and sexual abuse². Ensuring that perpetrators of sexual abuse are successfully prosecuted is an important part of fulfilling those obligations and ensuring that robust evidence is collected, including via forensic medical examinations is essential.

However, article 39 of the UNCRC also places an obligation on states to "*promote physical and psychological recover and social reintegration of a child victim of any form of neglect, exploitation or abuse...*"³. The current consultation does not address this and instead focusses solely on the process of forensic medical examination. Whilst we understand that legislation on this issue is complex, we would prefer this clinical pathway to be considered as part of a holistic clinical pathway which also addressed the recovery and support needs of children who are victims of sexual abuse.

Holistic support for children who experience sexual abuse

We believe that children's rights, particularly given the Scottish Government's commitment to incorporation of the UNCRC into Scots law, would be better served by proposals which were grounded more firmly in children's rights and drew on international best practice as demonstrated by the Barnahus model.

The Scottish Government has committed to exploring the introduction of the Barnahus model of children's centres, which provide a holistic and child-centred context for the investigation of sexual abuse **and** the continued recovery of child victims. We are disappointed that, despite reference to the Barnahus model in the introduction, this consultation places the proposals within current operational

¹ https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf

² <https://www.cypcs.org.uk/rights/uncrcarticles/article-36>

³ <https://www.cypcs.org.uk/rights/uncrcarticles/article-39>

contexts and in particular, as outlined in the pathway illustration on page 14, continues to separate the health service from other agencies' involvement.

Finally, we are deeply concerned that the proposals do not include all children under the age of 18. The protective rights outlined by the UNCRC apply to all children up to age 18 and article 2 requires that states parties "*respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind*".⁴ On page 22 of the consultation document it is stated that article 1 allows the setting of a lower age of majority under law. Whilst this applies to empowerment rights, such as the right to vote or to instruct a solicitor, it is not the case that states may choose which children are entitled to protective rights, such as those in articles 34 and 36 of the UNCRC. The existence of the UNCRC is based on the premise that all children under the age of 18 have vulnerabilities, as a result of being a child, and therefore require additional protections to those provided by other human rights treaties. The protections proposed by this consultation should therefore be extended to all children under the age of 18 and we feel there would be a case for extending them beyond 18 for those with disabilities and other specific vulnerabilities.

Recommendation

We recommend that:

- Scottish Government consider the clinical pathway for children who have disclosed sexual abuse within the wider discussion around the introduction of the Barnahus Model to Scotland
- Any provisions be extended to **all** children under the age of 18, in line with the UNCRC.

⁴ <https://www.cypcs.org.uk/rights/uncrcarticles/article-2>