



Maree Todd MSP
Minister for Children and Young People
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

2 August 2018

Dear Ms Todd

Protection of Vulnerable Groups and the Disclosure of Criminal Information

I write to respond to the above consultation and wish to specifically comment on a small number of issues which particularly relate to the rights of children and young people who are in conflict with the law.

The Protection of Vulnerable Groups (PVG) and Disclosure system is an important part of the protections the state has in place to fulfil its obligations to keep children safe. In particular, it serves to meet obligations contained within Article 19 of the United Nations Convention on the Rights of the Child (UNCRC), namely to:

Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical abuse, mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse...

The system was created in response to the recommendations contained within the Bichard Inquiry which followed the murders of two children in Soham by a school employee. We welcome the existence of the scheme and ongoing considerations as to how to improve it. The current system is unwieldy and excessively complex, making it difficult for many to understand. It would benefit from a thorough review based on human rights principles. In particular we are concerned that, where it relates to the behaviour of children under the age of 18, disclosure may result in secondary discrimination to already stigmatised and discriminated against groups of children¹.

Age of Criminal Responsibility

This consultation coincides with the introduction to the Scottish Parliament of the Age of Criminal Responsibility (Scotland) Bill ("the ACR Bill") and many of the proposals contained within the consultation are reflected in the content of the bill. I have responded to the call for evidence by the Equality and Human Rights

Committee regarding the bill and request that my response be considered together with this letter.

The ACR Bill aims to ensure that behaviour below 12 is no longer regarded, and responded to, as criminal, while addressing harmful behaviour in a way that addresses root causes, is non-stigmatising and allows the child to move beyond an incident in early childhood.² I strongly agree with this rationale, and welcome the broad welfare thrust of the Bill which focuses on the adverse effects of early criminalisation. However, limiting the argument to those under 12 is wrong and I recommended in my evidence that Parliament consider setting the minimum age of criminal responsibility to at least 16 years of age. I have outlined the evidence supporting that recommendation in my submission to Parliament. Ultimately it will be for Parliament to decide what the age of criminal responsibility is set at and the outcome of this will impact on the proposals contained within the current consultation.

It is important to recognise that children involved in offending behaviour are often amongst the most vulnerable in society and that many move between offending behaviour and being the victim of the offending behaviour of others. In their 2016 research, Centre for Youth and Criminal Justice (CYCJ) a high proportion of children involved in serious offending had experienced childhood adversity including neglect; abuse; loss and bereavement; inequality and deprivation; physical and mental health needs; speech language and communications needs; and learning disabilities and that a disproportionately high number of children in custody reported being care experienced³. In their response to this consultation, CELCIS confirm CYCJ's findings, stating that of children and young people referred to the Children's Reporter for offence grounds, more than a third were also referred on care and protection grounds. CELCIS also outline how children and young people with care experience are disproportionately likely to be criminalised for minor offending, through being more likely to have contact with the police and be involved in formal processes which lead to the recording of the behaviour. Those in residential care settings are more likely to accrue criminal convictions for minor behaviour⁴

Disclosure of Convictions

In my evidence to Parliament on the ACR Bill, I noted that the setting of a minimum age of criminal responsibility serves to protect children from the harmful effects of early criminalisation. I outlined the ways in which early criminalisation harms not only the child in conflict with the law but also wider society. Subsequent disclosure of convictions is one of the chief ways in which children's engagement with the law can stigmatise them in later life. I believe that information relating to convictions received before the age of 18 should be disclosed only rarely, where there are clear public protection or best interests grounds to do so. The responsibility should be on the State to demonstrate clearly, at the point of conviction, the grounds for subsequent disclosure. I am concerned that the lists of offences (schedule 8A and 8B) are inappropriate when considering childhood behaviour and in particular the

² Advisory Group on the Minimum Age of Criminal Responsibility (2016) *The Report of the Advisory Group on the Minimum Age of Criminal Responsibility*. Edinburgh: Scottish Government (para 1.24)

³ Centre for Youth and Criminal Justice (CYCJ). (2016). [Key messages from the Centre for Youth & Criminal Justice](#). Glasgow: CYCJ.

⁴ CELCIS. 2018. [Consultation response: Protection of Vulnerable Groups and Disclosure of Criminal Information](#). Glasgow. CELCIS

behaviour of those who have experienced trauma. In their response to this consultation, the CYCJ and the Improving Life Chances Group highlighted that, for example, s38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour) is included on schedule 8A, but this offence covers a wide range of behaviours and is one that children, particularly those in car, may accrue for fairly minor behaviours. It is not appropriate for a single approach to be used for the behaviour of children and that of adults.

Stigmatising effects of criminalisation

The Edinburgh Study of Youth Transitions and Crime (ESYTC)⁵ provides a robust evidence base showing how criminal justice responses and the stigmatising effects of criminalisation can exacerbate the complex problems and vulnerabilities associated with serious offending by children and increase the risk of reoffending. While most young people start to desist from offending at around 14 or 15, those furthest into the system (children's hearings), were more likely to be engaged in serious offending a year later, compared to a matched sample who had not experienced formal system intervention.⁶ The study also shows how, by dint of Police and Reporter working cultures and labelling processes, some young people are drawn into a cycle of repeat contact with the system, with damaging consequences around desistance and youth to adult criminal justice transitions. We know from our enquiries service that children and young people may only discover that such information when they are denied opportunities due to information on a PVG or Disclosure check. We have heard from young people who have experienced considerable difficulties in applying for a spent conviction to be reviewed.

Other Relevant Information.

Both this consultation and the ACR Bill include provisions around the disclosure of Other Relevant Information (ORI) held by the police. This concerns me. I feel that if police are able to hold or disclose information about 'behaviour' (even that of associates or family members) this is effectively disclosure through the back door, but without any of the checks and protections that currently exist. For example, unlike convictions that can become spent, ORI is subject to no such restriction and can be disclosed for as long as Police Scotland hold it. I agree with CYCJ that any disclosure of ORI or other non-conviction information should be rare and subject to a range of tests which are grounded in human rights. As with conviction information, the onus should be on the State to justify disclosure and there should be a clear, independent and accessible process to challenge these decisions.

Victims

The ACR bill introduces provisions to allow the disclosure to victims of information about certain cases involving children below the age of criminal responsibility, including how the case was disposed of. This does not currently occur. It is important that we consider the right to a remedy for victims of children's behaviour, many of

⁵ The ESYTC is a longitudinal study explaining young people's pathways in and out of offending. It examined self-reported offending from age 12, as well as contact with the justice system from a much earlier age.

⁶ McAra, L. and McVie, S. (2013) *Delivering justice for children and young people: Key messages from the Edinburgh Study of Youth Transitions and Crime*, Howard League for Penal Reform.

whom are also children. In my evidence to Parliament on the Bill I have discussed in detail the human rights context for the disclosure of information.

It is understandable that those who are harmed by children's behaviour may wish to know what has happened to the child who has harmed them. However, my view is that this is not proportionate. If children are not criminally responsible for the actions, it is not appropriate to share their personal details. This may constitute a breach of article 8 of the ECHR and Articles 16 and 40 of the UNCRC. There are rare occasions where it might be appropriate and in the best interests of the child to share limited information. If so, there should be a requirement for the Reporter to consult the child/family before deciding on the release of information on best interests grounds.

Conclusion

The PVG and Disclosure system would benefit from a thorough review, grounded in human rights. Scotland recognises that children in conflict with the law are often amongst the most vulnerable in society. It is important that the PVG and Disclosure scheme, when disclosing information about their behaviour, uses child-appropriate approaches, grounded in human rights and does not unnecessarily stigmatise them.

In response to the current proposals my recommendations are:

- Disclosure of convictions received before the age of 18 should be rare and only where there are public protection or best interests grounds to do so.
- Disclosure of ORI relating to the behaviour of children under the age of 18 should also be rare and be subject to a stringent range of tests grounded in human rights.
- The onus should be on the State to justify the reasons for disclosure of both convictions and ORI
- Victims should not be provided with private information relating to a child who has not been convicted of a crime. On the rare occasions conviction information is released, this should be done on best interests grounds and in consultation with the child and their family.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Adamson'. The signature is stylized with a large, looped 'B' and a cursive 'Adamson'.

Bruce Adamson

Children and Young People's Commissioner Scotland