

Communities, Equality and Local Government Committee
CELG(4)-24-14 Paper 5

Title: **Consultation response on the Gender-based Violence, Domestic Abuse and Sexual Violence Bill**

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Information and working context of Barnardo's Cymru

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 88 diverse services across Wales, working in partnership with 19 of the 22 local authorities, supporting in the region of 8,500 children, young people and families last year. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation and young people's substance misuse services.

Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better

childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

Barnardo's registered Charity Nos. 216250 and SC037605
Rhifau Cofrestru'r elusen Barnardo's 216250 a SC037605

Section 1 – The purpose of this Act:

Barnardo's Cymru support the general principles of this Bill and the need for legislation to improve the public sector response in Wales to gender-based violence, domestic abuse and sexual violence.

Section 2 and 3 – Duty to prepare, publish and review a national strategy; Duty to implement the national strategy:

We support the intention to introduce an Assembly Bill to address the policy objectives of this proposed legislation. We believe that this constitutes a positive step in terms of the Welsh Government bringing leadership and focus to work required to address gender-based violence, domestic abuse and sexual violence. We think this action would support the intention of raising the profile and awareness of these issues across Wales and provide strategic direction for taking action to address these challenges.

Potential barriers and unintended consequences:

Our main concern is that the experience of children and young people are marginalised within the Bill and its accompanying documents.

Since the publication of the White Paper in 2012 much ground has been lost as a consequence of removing the commitment to '*Ensure education on 'healthy relationships' is delivered in all schools*'. The overall responses to the White Paper evidence how much support there was for this across a broad cross-section of organisations. Reneging on this section is a serious backward step for the preventative agenda of the Bill in its entirety. Our specific concerns are laid out in a separate paper and submitted in collaboration with NSPCC and Welsh Women's Aid.

We welcome the fact that the Children's Rights Impact Assessment (CRIA) undertaken in relation to the Bill has been published. We accept that the policy intentions of the Bill, if effectively implemented, are likely to create opportunities for more children to grow up without being exposed to violence and the trauma associated with this and, as a result, will be in a better position to realise their rights.

However the lack of synergy between legislation and policy to address domestic violence, and legislation and policy to address child protection has, historically, been a significant barrier to addressing these family and intimate relationship problems effectively. The wording of this legislation does nothing to address this dichotomy.

However, we believe that the Bill offers opportunities for the stronger promotion of children's rights in line with the Minister's duty of due regard to

the UNCRC. As currently drafted the Bill does not include specific provisions for children as rights bearers.

Article 19 of the UNCRC states that:

1. States Parties shall take all appropriate legislative, administrative, **social and educational measures to protect the child from all forms of physical or mental violence**, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide **necessary support** for the child and those who have the care of child, as well as other forms of **prevention**, and for **the identification**, reporting, referral, investigation, **treatment** and follow-up of instances of child maltreatment.

We would like provision on the face of the Bill that in specifying what must be included in national and local strategies there will be an expectation that specific objectives relating to children and young people will be included. The Social Services and Well-being Act includes provision that *'a person exercising functions under this Act in relation to a child' ... 'must have due regard to Part 1 of the United Nations Convention on the Rights of the Child'*. The Bill would be considerably strengthened if the same provision were included and would ensure that a consideration of children's rights is central to the implementation of subsequent legislation and guidance.

Research carried out by the NSPCC and Bristol University between 2009 and 2011 highlighted the increasing prevalence of teenage intimate partner violence, particularly amongst vulnerable groups.¹ The UK government definition of domestic violence now includes 16 to 18 year olds. The Explanatory memorandum states that *'the Bill and any guidance will seek to support and complement existing safeguarding procedures concerning children under the age of 18, it will not replace them' (Scope of the Bill 41)*. However adolescents aged 16-18 are developing into adults and their status as such is recognised as being different. Whilst this is, theoretically, recognised within child protection practice the 'received wisdom' and attitudinal difficulties and barriers that have been experienced in practice in relation to acknowledging and recognising child sexual exploitation as abuse are a testament to how important it is to create clear legislation and guidance in relation to older adolescents. The problem with regard to child sexual exploitation has been a misunderstanding of the issue of sexual

¹ Barter, C. et al. Partner exploitation and violence in teenage intimate relationships. NSPCC. September 2009

Wood, M et al. Standing on my Own Two Feet: Disadvantaged Teenagers, Intimate Partner Violence and Coercive Control. NSPCC 2011

consent both on the part of the abused young people and some practitioners who have come into contact with them. Clearly the issue of consent and power within intimate and familial relationships is central to this legislation. Therefore we would urge that this Bill does indeed *'seek to support and complement'* the aims of the Social Services and Wellbeing Act by including a due regard to the UNCRC. We would also like to see the issue of sexual consent in adolescent relationships debated and direction provided through guidance.

There is considerable evidence that young people aged 16-24 are increasingly at risk of Intimate Partner Violence. The Violence Against Women and Girls Crime Report (CPS 2013-14) comments that *'it was of concern to note that 30.5% of victims (of violence against women and girls) were under 24 years old with 5% between 14 and 17'*. There is also a growing awareness of sexism and the roots of a distorted power balance in the relationships and peer cultures between younger children. Recent research commissioned by the Children's Commissioner for Wales, NSPCC Cymru and Cardiff University School of Social Sciences on the gender and sexual cultures of 10-12 year olds in Wales found that *'Many children were angry about having to live in a sexist peer culture and society.....mostly they were despairing at the futility of their own individual attempts at addressing everyday sexism and verbal sexual harassment²'*.

This Bill aims to *'improve arrangements for the prevention of gender-based violence, domestic abuse and sexual violence'*. It is evident that preventative education in schools, both primary and secondary, is a pre-requisite of any genuine attempt at addressing prevention in both the short and long term. The promotion of Article 19 of the UNCRC, para 1 in relation to *'educational measures'* and of Article 29 para 1(d) support the need for a comprehensive programme of education and prevention in education settings and in the community to develop the ability of children and young people to understand issues such as healthy relationships, consent and gender related bullying. We are disappointed to see that a commitment to such a programme is currently absent from the Bill.

Research evidence indicates that children who experience domestic violence in their homes as they grow up are at risk of being more tolerant of violence in their own relationships as they become adults. An analysis of serious case reviews following the deaths of children show domestic violence as a commonly recurring feature³. The Social Services and Well-being (Wales) Act introduces measures which are intended to provide a framework of services to promote well-being and provision for those with care and support needs. While children in families affected by gender-based violence, domestic abuse

² Renold, E. Boys and Girls Speak Out: A qualitative Study of Children's Gender and Sexual Cultures (age 10-12). 2014

³ Worrall, A et al. Children's and young people's experiences of domestic violence involving adults in a parenting role. Social Care Institute for Excellence. 2008

and sexual violence may be the subject of such intervention – including child protection measures there is no assurance that specific therapeutic support and treatment directed at and provided for children as rights bearers (Article 19, para 2) will be available. The Bill should set out the measures to be taken to ensure that the National Strategy and local strategies provide support and treatment to affected children so that they are able to recover from the negative impact of experiences that may limit their ability to realise their rights across other areas such as development, health, education etc.

Currently children in Wales do not enjoy full legal protection against all forms of violence so long as the defence of ‘reasonable punishment’ under section 58 of the Children’s Act 2004 remains in place. This can be used as a defence in cases of ‘common assault’. This means that parents and carers are allowed to resort to the use of a degree of violence toward their children whether they have attempted to employ positive parenting techniques or not. We think that this remains an anomaly within the Welsh Governments legislative programme and policy framework as it affects personal and social relationships and family life.

Section 4 – Duty to prepare local strategies:

We support the intention to introduce an Assembly Bill which would satisfy the policy aim of ensuring that local health boards and local authorities have a strategic focus on gender-based violence, domestic abuse and sexual violence in their local area.

We believe this will positively influence the coordination and focus of work currently being undertaken on a local level and will serve to enhance, and potentially intensify, the effective impact of operational delivery.

There may be barriers due to LHB and LA areas not being coterminous, or due to evolving cross-authority and regional working arrangements. The strategies would need to complement those of the relevant Police Forces.

Section 6 – Matters to which regard must be had in preparing or reviewing a local strategy

Recent changes to Welsh policy and legislation has led to an increased number of multi- agency approaches to address family support. The Team Around the Family approach enables a more structured approach to the deployment of multi-agency resource on a local and regional level. This has involved tiers of service being delivered on the basis of comprehensive assessment. Domestic violence is addressed through Families First Initiatives on a preventative level whilst integrated Family Support Services are focussed intensive interventions with families with complex need, deployed as a final intervention prior to the need for child protection intervention.

These initiatives are part of a suite of programmes including Flying Start and Communities First, all of which are responses to the Welsh Governments policies to tackle poverty and child poverty. As such these programmes respond to a social cohort recognised as being at high risk of domestic violence, and addressing domestic violence is a key part of the operational work involved.

The local gender-based violence, domestic abuse and sexual violence strategies will need to incorporate this activity. The multi-agency nature of this work again supports the proposal to include a requirement that due regard be paid to Part 1 of the United Nations Convention on the Rights of the Child on the face of the Bill. This would enable a closer fit with this work and result in a more comprehensive strategy.

Section 8 – National indicators;

Outcomes and indicators relating to this work need to take into consideration the strategic outcomes established for other strategic approaches to delivering related policy such as the outcomes framework relating to the Social Care and Wellbeing Act, and the Together For Mental Health outcomes framework.

Sections 11 to 14 – Meaning of ‘relevant authority’; Power to issue statutory guidance; Consultation and National Assembly for Wales procedures; Duty to follow statutory guidance

Barnardo’s Cymru welcomes the proposal for statutory guidance on the National Training Framework, Ask and Act and Multi-agency Fora.

National Training Framework and ‘Ask and Act’

Our concern in relation to the National Training Framework and ‘Ask and Act’ is that they are informed with regard to the issues as they affect the experience of children and young people. The ‘All Wales Practice Guidance on Safeguarding Children and Young People Affected by Domestic Abuse’ lists the risks to children and young people living with domestic abuse as including the following:

- Direct physical or sexual abuse of the child. Research shows this happens in up to 60% of cases; also the severity of the abuse against the non-abusive parent is predictive of the severity of abuse to the children
- The child being abused as part of the abuse against the non-abusive parent

- Being used as a pawn or spies by the abusive partner in attempts to control non abusive parent
- Being forced to participate in the abuse and degradation by the abusive partner
- Emotional abuse and physical injury to the child from witnessing the abuse
- Hearing abusive verbal exchanges between adults in the household.

The assessment of risk in relation to situations of domestic violence is notoriously difficult. The welfare of children, including teenagers, is highly dependent on those with caring responsibilities for them. However emotionally and physically abused parents/carers may unwittingly neglect their children due to having to deal with their own physical and mental health responses to their own abuse. The abused parent/carer may also be abusing their children. It's important that in such situations both the needs of the parent and child are addressed simultaneously. Paying due regard to the needs of all parties involved, including the perpetrator, may require a multi-agency approach to the assessment process.

As part of the assessment it's important that all professionals ascertain early on in the process whether there are children in the household, or whether the adults involved have care of children. The assessment in relation to the safety of the children can then be considered as part of the initial assessment, or separately by specialist child protection personnel. It's important that the initial assessment needs of the child are not overlooked due to assessor bias. If the assessor views the abused adult/parent as their primary client then this will compromise their capacity to give due regard to the needs of the child or young person. At this point they should allocate the assessment of the child's safety to another professional who can pay them due regard.

The All Wales Child Protection Procedures Review Group have produced a highly regarded portfolio of practice guidance, including one which addresses safeguarding children and young people affected by domestic violence and another addressing the safeguarding needs of those affected by child sexual exploitation. These practice guides are relevant for a cross –section of frontline and specialist practitioners working in the statutory and voluntary sectors and could inform the development of training.

Multi-agency Fora

The Multi Agency Risk Assessment Conference (MARAC) is a recognised and respected approach to addressing high risk cases of domestic and intimate partner violence. Organisations working with children and young people are represented on the MARAC which means that it is an example of a strategic and practice approach which successfully bridges the divide between child protection work and domestic violence work, which has been problematic in the past.

Multi-agency approaches are effective in addressing safeguarding and protection issues as they support improved information sharing between agencies which leads to improved assessment and more effective allocation of resources. We would advocate for all LHB/LA areas to establish Multi-agency Safeguarding Hubs (MASH), which are frameworks within which specialised safeguarding multi-agency approaches can sit. These could include the MARAC, Child Sexual Exploitation Protocols, Domestic Violence protocols and Missing Protocols. The MASH would then become a single point of entry for cases where there are safeguarding needs. This facilitates more consistent assessment being administered so that a suitable referral pathway can be established at the earliest opportunity. Just as the Team Around the Family/Joint Assessment Family Framework performs this task with regard to the implementation of policy in relation to poverty, the MASH has the same potential for efficiency and efficacy in relation to this legislative and policy addressing violence and sexual violence.

Perpetrator programmes

There is no reference made in the documentation to perpetrator programmes and whether they will be included within the remit of the National Training Framework. We believe that ongoing work to develop effective perpetrator programmes and to increase the capacity for early identification of, and intervention with, perpetrators is an important part of the overall approach to address these issues.

Sections 17-20 – Ministerial Adviser on Gender-based Violence, Domestic Abuse and Sexual Violence; Functions of the Adviser; Annual plan and annual report; Publication of reports:

Barnardo's Cymru agrees that an executive function operating at government level is required to drive through the changes outlined in the Bill. However we remain concerned that the role of ministerial adviser, as described, may be too broad in reach and too limited in authority to achieve the change required.

The ambition of the proposals outlined in the Bill lie in the cultural, attitudinal and ultimately behavioural change that are its aims. This legislation lays the ground, or prepares the framework, within which it is hoped the real hard work of these changes can begin to take place.

In our view this requires a role which is more than an executive role with functions to advise, assist and provide research. A role is required which has the authority to drive forward the implementation of the national and local strategies and ensure that gender-based violence, domestic abuse and

sexual violence are tackled with thought and vigour ensuring that the victims have access to their human rights.

Despite the larger costs to be incurred we remain of the opinion that this is work that can only be driven effectively by an Independent Commissioner role, which can hold government and other Welsh institutions to account. This is particularly important at this point in time when economic recession has driven more people into poverty and vulnerability, whilst support services such as Citizens Advice and Women's Aid have been reduced. An Independent Commissioner would ensure a high public profile for these issues as well as a resource that could be approached directly for advocacy and support. We think that creating a commissioner for gender-based, domestic and sexual violence would evidence the governments commitment to a fairer and better society and would be an investment in the future of Wales beyond the recession.