



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

25th Meeting, 2014 (Session 4)

Tuesday 7 October 2014

The Committee will meet at 10.30 am in the David Livingstone Room (CR6).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 3, 4 and 5 in private.
2. **Child sexual exploitation:** The Committee will take evidence from—

 Catriona Dalrymple, Head of Policy Division, and Stephen McGowan, Procurator Fiscal, Major Crime and Fatalities Investigation, Crown Office and Procurator Fiscal Service;

 Assistant Chief Constable Malcolm Graham, Police Scotland.
3. **Draft Budget Scrutiny 2015-16:** The Committee will further consider its approach to the scrutiny of the Scottish Government's Draft Budget 2015-16.
4. **Work programme:** The Committee will consider its work programme.
5. **Criminal Justice and Courts Bill (UK Parliament legislation):** The Committee will consider a draft report.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/14/25/1

Private paper

J/S4/14/25/2 (P)

Agenda item 3

Private paper

J/S4/14/25/3 (P)

Agenda item 4

Private paper

J/S4/14/25/4 (P)

Agenda item 5

Private paper

J/S4/14/25/5 (P)

Additional paper for agenda item 3

Private paper

J/S4/14/25/6 (P)

Justice Committee

25th Meeting, 2014 (Session 4), Tuesday, 7 October 2014

Child sexual exploitation

Note by the clerk

Purpose

1. This paper provides some background in relation to the Committee's decision to hold an evidence session in relation to child sexual exploitation at this meeting.

Background

2. In its report on *Tackling child sexual exploitation in Scotland*¹ published on 14 January 2014, the Public Petitions Committee (PPC) recommended that post-legislative scrutiny of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 should be undertaken "to ensure that the intention of this legislation is delivered and that all possible perpetrators of child sexual exploitation crimes² are being prosecuted".³ The 2005 Act created a specific offence of grooming a person under 16 (section 1) and made provision to apply to the court for a Risk of Sexual Harm Order (RSHO) where an individual is suspected of involvement in a course of conduct to groom a child. The PPC's concerns relate to the apparent lack of prosecution of these offences under the 2005 Act.

3. The Committee considered the PPC's request to undertake this post-legislative scrutiny in March and agreed to return to the issue once time became available in its work programme. The Committee considered the request again on 19 August. Given the time that had lapsed since the PPC took evidence and reported on the issue, the Committee agreed to invite the Crown Office and Procurator Fiscal Service (COPFS) and Police Scotland to give evidence on 7 October, with a view to establishing the current position on prosecutions of offences under the legislation. The Committee also requested written updates from COPFS and Police Scotland on use of the legislation and any barriers to prosecution and from the Ministerial Working Group on Child Sexual Exploitation on any steps it is taking to encourage use of the legislation.

4. Responses from COPFS, Police Scotland and the Cabinet Secretary for Justice are attached at Annexe A, along with a submission from Barnardo's (the petitioner of the petition PE1393 on child sexual exploitation which prompted the PPC's inquiry).

Evidence session

5. The Committee is invited to consider the submissions received in advance of taking evidence from COPFS and Police Scotland at the meeting.

¹ In its [response to this report](#), the Scottish Government announced that the Ministerial Working Group looking at child sex exploitation would take account of the PPC's recommendations.

² In Scotland, the definition of child sexual exploitation is: "Any involvement of a child or young person below 18 in the sexual activity for which remuneration of cash or in kind is given to a young person or a third person or persons. The perpetrator will have power over the child by virtue of one or more of the following – age, emotional maturity, gender, physical strength, intellect and economic and other resources, e.g. access to drugs".

³ Public Petitions Committee. *1st Report, 2014 (Session 4) Report on tackling child sexual exploitation in Scotland*, paragraph 50.

ANNEXE A**Submission from the Police Scotland on child sexual exploitation**

I write in response to the request for evidence from the Justice Committee regarding post legislative scrutiny on the use of provisions within the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

The Justice Committee is specifically seeking evidence on the use of the legislation detailed in Section 1 of the Act namely 'child grooming' and provisions around the Risk of Sexual Harm Orders also contained therein, both of which will be addressed as key issues.

Police Scotland is committed to ensuring that all lawful means are considered and utilised to protect children and young people in Scotland from abuse and in particular from child sexual exploitation (CSE). As the lead for Public Protection I am determined to pursue and bring to justice whenever possible those who seek to exploit and abuse children.

Police Scotland continues to work with partners across all areas of child protection to progress and improve our approach to tackling child abuse whilst meeting the challenges presented by advancement of technologies, increased awareness by perpetrators of law enforcement techniques and changes in social attitudes.

The publication of The Rotherham Inquiry into Child Sexual Exploitation (CSE) has again focused not only the attention of statutory and voluntary organizations with responsibility for protecting children but has also captured the attention of the wider public through extensive media reporting. Along with senior colleagues I have been working with partners on the Scottish Government Ministerial Working Group to develop and implement the National Child Sexual Exploitation Action Plan and while much positive work has been done I am determined that there will be no complacency within Police Scotland to tackle this complex area of child abuse.

Considerable momentum continues to drive and improve the police response to CSE. In order to aid understanding of the prevalence of this form of abuse I have commissioned a strategic analytical profile, recognising that a wider knowledge of the ramifications and damage this particular form of child abuse can have on children and young people is required both in the professional and public arena.

A Police Scotland Action Plan on CSE, to compliment and support the Scottish Government Action Plan, is currently being implemented, and has already had a tangible impact on the actions and understanding of frontline staff. The plan co-ordinates and drives activity across the Police Scotland business areas of Public Protection, Intelligence, Safer Communities, Corporate Communications, National Missing Persons and Local Policing, recognising that for the police to tackle CSE we must not only work effectively with partners but also utilise the full extent our available resource and skills.

The strategic aims of the plan are designed to improve training, partnership working and prevention activity. As our understanding and knowledge of the complexities of CSE continues to increase I have initiated the development of specific Police Scotland procedures to tackle this form of child abuse to ensure a consistency of response to

children vulnerable to CSE and to ensure we remain focused on apprehending those responsible for exploiting our children.

Over the last six months I have initiated a wide ranging national project to review and improve the policing response to risk and concerns for the most vulnerable people in our communities. This project aims to directly improve policing approaches across the spectrum of Public Protection disciplines, including those children at risk of being sexually exploited. A key part of this approach is the development of a national Child Abuse Investigation Unit, sitting alongside other dedicated national units in support of local policing. The unit will lead and co-ordinate complex enquiries, developing good practice through enhanced specialist investigatory capacity, and is in the process of being implemented.

It is crucially important that all Police Scotland officers and staff are aware of the presence of CSE within in our communities and understand their roles and responsibilities in responding to it. To convey this I have recently delivered a personal message on the impact of CSE through our internal communication platform. This message is underpinned by published guidance, procedures and in particular links to best practice reference material available from the College of Policing. This is a continuous learning and development process which is embedded within an overall Public Protection communication strategy that aims to use social media and marketing tools to guide and inform Police Scotland staff, our partners and our communities.

The Protection of Children and Prevention of Sexual Offences Act (Scotland) Act 2005 contains specific legislation relating to the offence of 'child grooming' which broadly speaking applies to those individuals who have either met or target a child through various modes of communication with the intention of meeting the child to have unlawful sexual activity. For the purposes of presenting evidence of policing the elements of this offence this can be further referred to as 'contact' and 'online' grooming.

In order to meet the demands of changing technologies that directly influence offending behaviour Police Scotland continues to invest in specialised law enforcement techniques to capture online offending activity. Within this field practices and procedure continue to be reviewed and developed to deliver a consistency of approach that has yielded significant positive results in this area. The online investigation enquiries have since 1st April 2013 led to 283 individuals being charged with offences linked to their online activity. Through the identification of individuals involved in this form of child abuse, and following arrest, conviction and subsequent registration on the Sex Offenders Register, the risk these individuals pose within the community can be fully assessed and effectively managed by Police Scotland and our partners. In the highest risk cases this includes an application for a Sexual Offences Prevention Order where appropriate.

Many of these offenders are resourceful, intelligent and sophisticated in their pursuit of online offending. Police Scotland has sought to identify best practice from across the UK and beyond. In the forthcoming period experts from the United States will visit Scotland to educate and inform our specialist cybercrime and online resources in the use of advanced techniques to further pursue offenders. I remain resolute in my determination to target these criminals through the effective and efficient use of resources and emerging technologies, particularly since such behaviour can be the predicate offence to more hidden forms of abuse including CSE.

There is no doubt that around the globe the volume of offending through all forms of online activity whether it be possession of indecent images of children, 'online' grooming with intent to commit further sexual offences or the exchange of indecent images amongst groups is escalating due to increased accessibility to devices, improved download technologies and the development of sophisticated software to conceal activity. All law enforcement agencies recognise the challenge this presents and I fully support multi-agency collaborations to support continuous improvement in the fight against this form of child abuse.

We continue to learn from previous investigations undertaken into CSE with more recent enquiries showing that multi-agency practice continues to evolve, leading to improved information sharing, better understanding of risk factors, enabling more effective risk assessment based on the needs of the child, whilst at the same time focusing on targeting and disrupting those responsible. This multi-agency approach has included early discussion with COPFS leading to improved presentation of evidence in complex CSE investigations ensuring the most effective legislative option is considered. Further preventative measures such as the use of Risk of Sexual Harm Orders remain an active preventative consideration where direct evidence of criminality cannot always be achieved.

I am determined that as we move forward, Police Scotland will continue to use the findings and learning from all sources, and especially the most challenging and high profile investigations to improve our response to CSE .

I wish to provide the following information to the Justice Committee in response to the request for specific background to the following points.

The use of Section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 by Police Scotland

Crimes recorded across legacy force areas including Police Scotland since enactment of legislation amounts to 162 recorded crimes in total. A sample analysis of these crimes has revealed 58% of these crimes were 'non-contact' grooming offences suggesting intervention through the use of this legislation had reduced the opportunity for contact sexual offences to take place.

Of the remaining 42% of crimes recorded those were 'contact' offences, two thirds of them also included sexual offences either under the Sexual Offences (Scotland) Act 2009, the Criminal Law Consolidation (Scotland) Act 1995 or Lewd, Indecent and Libidinous Practices.

The remaining third of reported crimes highlights the effectiveness of the legislation as an actual preventative offence as the pattern follows a trend of befriending online with a view to meeting up at a location for the purpose of unlawful sexual activity or being a "trusted" figure making arrangements to meet the child for the purposes of unlawful sexual activity. In these circumstances the application of the legislation may have prevented serious sexual harm occurring.

The use of S1 of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 by Police Scotland since April 2013

A total of 35 crimes involving the offence s1 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 have been recorded across Scotland since the inception of Police Scotland in April 2013. From a total since the legislation was enacted

of 162 this represents an upward trend in usage in recent times, which I would attribute to the activities already described, and would expect that this will continue to rise.

The offence has been used effectively in Operation Dash, a multi-agency operation that is being led by Police Scotland and that has from its inception sought to determine the extent of child sexual exploitation in the Greater Glasgow area and subsequently pursue criminals engaged in CSE and to ensure victims receive the support and welfare they require. Police Scotland and partners from Crown Office and Procurator Fiscal Service consult regularly to discuss the most effective legislative options available to report the criminals responsible. The application of this legislation has successfully resulted in one individual being convicted of S1 offences and who is due to be sentenced at the High Court in Glasgow on the 9th October.

This remains an active ongoing criminal investigation and I can provide further information when appropriate.

The barriers to reporting S1 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

I recognise that the number of offences recorded under this legislation is much lower in comparison to other sexual offences and related crimes.

I have sought to examine the reasons for this and there are a number of possible explanations. Firstly it is believed in many cases that the precursor grooming activity is only established after the disclosure of a contact offence and during the criminal investigation. In such cases where the offender is arrested for a substantive sexual crime, the grooming behaviour is most commonly presented as part of the conduct of accused to support the motive for the more serious criminal contact offence. We remain in constant dialogue with COPFS to ensure that investigations seek to identify any criminal conduct and use all legislative means available.

Where online offending is detected through the use of specialist resources and subsequent device examination following the arrest of an offender, an assessment is made to establish if any contact offending has occurred. Offenders are reported in relation to possession of indecent images of children, and further complex and resource intensive investigation is not always required as conviction of possession of the images will ensure the offender is placed on the Sex Offenders Register. This proportionately allows the prioritisation of the large volume of 'new' online enquiries which require to be undertaken timeously and effectively to mitigate potential risks.

In spite of increasing usage, I remain convinced that sustained efforts to raise awareness of the legislation are required and will be successful, given the prevalence of communication through social media platforms and applications by children and young people.

Current improvement measures being undertaken to increase usage of legislation

I have communicated to all Police Scotland officers and staff guidance on the application of the legislation and raised at senior management meetings my expectations as to supervisory officers ensuring that officers fully exploit the opportunities this legislation presents. In addition I have ensured that more comprehensive guidance on CSE has been made available to all specialist officers working in Public Protection..

Further key messages to all officers and staff on the prevalence and effect of CSE and the actions officers can undertake to prevent this abuse through the use of the legislative tools has been communicated widely through various means.

In addition to these measures current training for all officers and staff is being reviewed and already new inputs on CSE for various Detective Courses and guidance on the legislation has been incorporated. Police Scotland continues to work closely with the COPFS to ensure that training and most importantly operational practice continues to improve.

I have instructed a review be undertaken of the operation of the 'Keeping Children Safe' Community Disclosure scheme designed to empower parents/carers in protecting their children in recognition that community awareness and empowerment have been highlighted by third sector and statutory partners as a significant area that requires improvement across Scotland.

I am actively seeking to develop and build upon links with 'hard to reach' sectors of the community through Police Scotland's Safer Communities departments to build confidence and trust with a view to increasing the reporting of child abuse to the police either directly, or through third party reporting.

Use of Risk of Sexual Harm Orders since enactment of Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 sections 2–8 created legislation that enable the Chief Constable to the relevant Sheriff Court for a Risk of Sexual Harm Order RSHO where it appears an individual has on at least 2 occasions done any of the following acts:

- Engaged in sexual activity involving a child or in the presence of a child;
- Causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;
- Giving a child anything that relates to sexual activity or contains a reference to such activity;
- Communicating with a child when a part of the communication is sexual

Since the enactment of the legislation in respect of Risk of Sexual Harm Orders (RoSHO's), 31 orders have been granted as either Interim or full orders in Scotland.

There are currently 23 live orders, 10 of which are Interim Orders. There is no information available for occasions when an order was considered and/or applications were declined at Court. Again, this represents an increased usage in recent times, but clearly there are more opportunities that may have been considered appropriate for such orders in the absence of conviction.

The barriers to use of Risk of Sexual Harm Orders

Research has not revealed any definitive limiting factor on the number of RSHOs applied for or obtained. However, there do appear to have been instances where the requirement for application within three months of relevant conduct being reported has been a barrier to progressing an application. In addition, the orders are only available for those children under 16 years of age and where potential victims are now older than 16 at the time of reporting, orders were not considered.

The prescriptive nature of the legislation leading to these misinterpretations has been identified and I would suggest the following changes would improve the use and effectiveness of RSHO's:

- Reducing the stated two required courses of conduct to one single act of a sexual nature that would indicate the individual presents a suitable risk on the community that the order is necessary.
- Increases the scope for the individual to whom the conduct has been directed and thus requires the protection namely including young people up to the age of 18years and also including adults deemed at risk of physical or psychological harm.

These changes would not affect a person's right to appeal as is with there is with current legislation.

The above measures would permit the legislation to be truly preventative as opposed to requiring a form of corroboration before it can be effective. Furthermore widening the conditions of those who are requiring protection will actually serve to protect those individuals whom we have established are targeted by such individuals.

Current Improvement measures in usage of Risk of Sexual Harm Orders.

More detailed guidance on the use and application of Risk of Sexual Harm Orders is contained within the Police Scotland CSE action plan to increase the effective use of these orders.

Existing processes, including scrutiny by supervisors, continue to be improved to ensure that all relevant cases can be considered for suitability for RSHO or other preventative orders. This work continues to be progressed by senior officers with leading roles in Child Protection and Offender Management within the Specialist Crime Division of Police Scotland.

In conclusion, Police Scotland recognises that the effective use of preventative legislation can reduce the risk to vulnerable children who may be subjected to CSE or wider forms of child abuse. However I am firmly of the view that legislation on its own is not enough. It must be accompanied by a firm commitment and willingness by all relevant agencies to work together with the necessary urgency to identify and tackle those responsible for the sexual exploitation of our children and to identify children at risk of CSE to ensure appropriate support and welfare is provided and thus prevent their exploitation.

I wish to assure you that whilst much continues to be achieved and improved, there is no room for complacency and I am committed to leading and further improving Police Scotland's response to this complex form of child abuse which can have a devastating and lasting effect on children and their families.

Malcolm Graham
Assistant Chief Constable Major Crime and Public Protection
30 September 2014

Correspondence from Crown Office and Procurator Fiscal Service on child sexual exploitation

Thank you for the opportunity to provide evidence for the Justice Committee's inquiry into child sexual exploitation.

The Crown Office and Procurator Fiscal Service (COPFS) recognises the devastating impact of child sexual exploitation and the importance of the thorough investigation and robust prosecution of these offences.

We will prosecute all such offences where there is sufficient available evidence and it is in the public interest to do so, as it almost invariably is in cases involving sexual exploitation of children.

COPFS has a cadre of highly qualified, specially trained Advocate Deputes in the National Sexual Crime Unit (NSCU), which deals with all serious allegations of sexual crime, including child sexual exploitation and human trafficking. The Head of NSCU gave evidence to the Public Petitions Committee with the Lord Advocate in 2013. There is a lead Procurator Fiscal for Sexual Offences and a lead for Human Trafficking. All cases involving serious sexual offences are reported to NSCU for instructions. This dedicated team of senior prosecutors direct criminal investigations from the earliest stages, providing advice and expertise on all aspects of the investigation and preparation of cases.

This specialism is being replicated in local Sexual Offence Units around the country to ensure that cases reported to NSCU have been prepared to the highest possible standard.

You have asked specifically for information on potential barriers to prosecution. I responded to a similar request prior to the Lord Advocate giving evidence to the Public Petitions Committee in June 2013 as undernoted at Appendix 1. These barriers remain. In addition to these barriers, recent experience of cases have highlighted that a number of victims of CSE are teenage girls who have lived or are living in care: they have multiple layers of complex needs and concerns. They can willingly associate with older males who offer cigarettes, alcohol and a night away from their residential home. Many of these teenage children do not realise that they are victims of exploitation and even when they commence engagement with the Criminal Justice system they remain extremely vulnerable and distrustful of all agencies. This makes detection and subsequent engagement in the investigation and prosecution challenging. These barriers will not deter Prosecutors from focusing on the offending behaviour.

It may also be helpful to record that while the starting point for some cases is disclosure by a child – and there are many barriers to such disclosure, as I have highlighted - for others the detection and reporting is by a 3rd party leading to investigation and engagement with identifiable victims. This presents a challenge and awareness raising responsibility for many organisations and the wider community.

You have specifically asked about the conviction numbers in child grooming offences; the section which covers child grooming offences is Section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) 2005 Act. I have attached at Appendix 2 to this response a table showing the figures for prosecutions of Section 1.

It is important to note that in cases which come under the definition of child sexual exploitation the most appropriate charge will not always be under the 2005 Act but may more appropriately be prosecuted under the 2009 Act or at common law. For example a child who has been groomed from the age of 13 and sexual intercourse commences when she is aged 14. As part of the grooming she is given alcohol and a mobile telephone with top ups. When she is 15 her carer realises that she is in a sexual relationship with the perpetrator and reports this to the police. This is not an unusual circumstance which would most likely be prosecuted under s28 of the 2009 Act (having intercourse with an older child) but with a narration of the circumstances of the grooming. The grooming behaviour may be difficult to prove by corroborated evidence given that it will have occurred in private. As part of the narration and/or the evidence at trial, it can be taken into account by the court at sentencing.

The Committee will no doubt be aware that sexual exploitation of children can have links to serious and organised crime and to Human Trafficking. COPFS encourages prosecutors to use all legislation at their disposal to its best and prohibitive effect, including using legislation to seize proceeds of crime thereby making breaching the law less attractive to criminals. Work is ongoing to legislate for an aggravation of crimes which are linked to human trafficking which will enhance the legislation already available to COPFS.

You have also asked for the number of Risk of Sexual Harm Orders (RSHO's). This is an order made by the Court on the application of the Chief Constable and figures are not held by the Crown. Police Scotland has been asked to submit these. However to assist the committee, I have also included details of the number of breaches of the RSHO's reported to COPFS and the outcomes.

I hope this information is of assistance to the Committee.

Catherine Dyer
Crown Agent & Chief Executive
26 September 2014

COPFS Appendix 1

What barriers exist to identifying, disrupting or prosecuting child sexual exploitation perpetrators? How might these be overcome?

- The starting point for any prosecution is normally a disclosure by the child of what has happened. It is well recognised that child victims vary in how and when they disclose the abuse that they have been subjected to. In some cases the child will not realise that what is happening to them is wrong and therefore may feel that there is nothing to disclose. At the point when the child realises that it is wrong, disclosure may still not follow immediately. Disclosure can be delayed for a number of years for a variety of reasons which could include; not wishing to upset other family members; a fear of not being believed; because of threats made to them; or a fear of splitting a family unit. Sometimes multiple disclosures will be necessary before the full extent of the abuse is known and sometimes that disclosure can happen over a number of years.
- Once the disclosure by a child or children is made and reported to the police, the investigation of the abuse and the perpetrators will begin. In Scotland all the essential elements of a crime must be corroborated which means that there must

be two sources of evidence to prove the crime was committed and that the accused was the perpetrator. There can be a number of reasons why corroboration can be difficult to obtain. If the disclosure by the child has been delayed, even for a short time, opportunities for forensic and other types of evidence could have been lost. The majority of sexual offences take place in private and accordingly corroborating what actually took place can be difficult. The research for the Carloway Review supports the view that in crimes of a private sexual nature, such as rape, the abolition of the requirement for corroboration and the adoption of a separate evidential test such as a reasonable prospect of conviction would result in the Crown being able to take proceedings in many more of these serious sexual offences. The abolition of the requirement of corroboration may also have a significant impact on how the Crown can approach such cases. Prosecutors can and are frustrated where there is a credible and reliable witness but there is no evidence to corroborate the essential elements of the charge.

- There can also be barriers in dealing with cross border offences with other parts of the UK. While Scotland has jurisdiction over Scottish nationals who have committed specified sexual crimes⁴ in a country outside the United Kingdom it does not have jurisdiction over a similar crime if it was committed elsewhere within the United Kingdom. So for example if a Scottish national was to groom and then travelled to meet and rape a child in France, Scottish courts would have jurisdiction over both offences. If the same Scottish national had groomed, travelled to England and raped a child the Scottish court would only have jurisdiction over the grooming charge and not the rape.

COPFS Appendix 2

Action taken re Accused	Action taken re Charge	Outcome	2009-10	2010-11	2011-12	2012-13	2013-14	Total
Solemn	Court	Convicted	14	18	5	2	6	45
		Not Convicted	5	6	3	5	6	25
		Ongoing	1	1	-	8	16	26
		No Further Action	2	1	5	2	5	15
		Not a Separate Charge	4	10	4	6	2	26
Solemn Total			26	36	17	23	35	137
Summary	Court	Convicted	1	3	3	1	1	9
		Not Convicted	1	4	1	-	2	8
		Ongoing	-	-	-	1	-	1
		No Further Action	-	-	-	-	1	1
		Not a Separate Charge	7	1	1	-	2	11
Summary Total			9	8	5	2	6	30

⁴ S 55 of the Sexual Offences (Scotland) Act 2009

Direct Measures	Diversion		-	-	1	-	-	1
	Warning		-	-	-	1	-	1
Direct Measures Total			-	-	1	1	-	2
No Action	No Action		5	4	5	2	7	23
No Decision	No Decision		-	-	-	-	2	2
Totals			40	48	28	28	50	194

NOTE Not a separate charge: the total number of charges reported will also include charges where action was taken in relation to other charged reported in the case, for example, because the prosecutor took the view that an alternative charge was more appropriate or because details of the charge were included within the body of another charge for evidential reasons.

Submission from the Cabinet Secretary for Justice on child sexual exploitation

Thank you for your letter of 22 August 2014, seeking information to assist the Justice Committee's post-legislative scrutiny of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 ("the 2005 Act"). I apologise for the delay in responding.

Child sexual exploitation is an abhorrent crime and can have a devastating impact on its victims and their families. The Scottish Government is absolutely committed to protecting children and young people's wellbeing and has already implemented a range of work with our partners to ensure we remain vigilant to abuse and are able to offer support to survivors. As part of the Scottish Government's commitment, I can assure the Committee that the law in this area is kept under review to ensure it is fit for purpose.

In your letter, you mention the work of the Ministerial Working Group established in 2013 by the Scottish Ministers. The Working Group looked at a range of areas relating to child sexual exploitation including the existing criminal law.

The Working Group noted that where sexual offences are committed against children, there are a range of offences that it may be appropriate to charge the offenders with. As well as the offences contained in the 2005 Act, they noted there are a range of offences contained in the Sexual Offences (Scotland) Act 2009 which criminalise sexual activity with children and in many cases, it was agreed that it may be more appropriate to charge an accused person under this Act, rather than the 2005 Act.

The Working Group stated in their report that they were satisfied that there were no significant gaps in the overall scope of the criminal law to pursue child sexual exploitation as an offence. They did however consider that there is a case for seeking to extend the extra-territorial effect of sexual offences against children to include offences committed elsewhere in the United Kingdom so that they can be prosecuted in Scotland if needed. The Scottish Government is considering this suggestion with a view to bringing forward legislative changes when a suitable legislative opportunity arises.

I note that it has been suggested that the relatively small number of people convicted of the offence at section 1 of the 2005 Act of 'meeting a child' may indicate that this

offence is under-used. However, it is important to recall that the offence is intended to criminalise a quite narrowly defined type of offending behaviour that was not already covered by the existing criminal law at the time the 2005 Act was legislated for. This is shown by the Policy Memorandum which accompanied the Bill at introduction which stated:

“The law as it currently stands is able to deal with many cases that involve grooming behaviour. Possible offences include fraud; offences under the Communications Act 2003; offences under the Civic Government (Scotland) Act 1982; lewd and libidinous practices; and breach of the peace.”

Furthermore, since the 2005 Act was passed, the offences of communicating indecently with a child and causing a child to see a sexual image have been created by the Sexual Offences (Scotland) Act 2009, and, as noted by the Working Group, these offences may also be relevant when prosecuting those who seek to sexually ‘groom’ children.

As a justification for the section 1 offence, the Policy Memorandum went on to note that:

“It is conceivable...that at present someone could carefully tailor their behaviour to ensure that no offence was committed during the course of grooming (Any subsequent sexual assault would of course constitute a serious offence.)”

This could occur where the ‘grooming’ does not involve any overtly sexual communication with the child that could be prosecuted using, for example, offences in the Sexual Offences (Scotland) Act 2009, or the Communications Act 2003.

The Scottish Government’s view is that the offence at section 1 is intended to provide protection for children by making it a criminal offence for a person aged 18 or over who undertakes a course of conduct with a child under 16 leading either to a meeting, during or after which the adult intends to engage in sexual activity with the child, or who travels with the intention of having such a meeting.

As such, the set of circumstances in which the offence at section 1 of the 2005 Act will be appropriate as the main charge is quite narrow. Where an adult communicates sexually with a child (e.g. via the internet), that person could, if detected, be prosecuted using offences contained in the 2003 or 2009 Acts. Where someone who sexually grooms a child is detected only after they have committed ‘contact sexual offences’ against the child, that person would be charged with those contact offences. A person is likely to be charged with the ‘grooming’ offence only where they are detected at the point where they arrange to meet the child with the intention of engaging in unlawful sexual activity.

While it is of course difficult to assess for any offence what an appropriate number of prosecutions and convictions should be, it is clear that the inclusion of the section 1 offence in the 2005 Act was not intended to lead to a massive number of prosecutions and convictions given it was designed to address a small gap in the existing criminal law at that time.

In terms of Risk of Sexual Harm Orders the Scottish Government agrees it is important that the police and other criminal justice agencies tasked with managing individuals who pose a risk of sexual harm have the broadest range of powers available to do that. Accordingly Scottish Government officials and key stakeholders are currently looking at the utility and effectiveness of these orders. We want to ensure that adequate provision

is in place to protect our communities, simplify the landscape (thereby giving greater clarity to the police), and help the police and others exercise their professional discretion.

I hope this information is helpful to the Committee in undertaking its post-legislative scrutiny of the 2005 Act and I look forward to reading your report.

Kenny MacAskill MSP
Cabinet Secretary for Justice
2 October 2014

Submission from Barnardo's Scotland on child sexual exploitation

Summary

- Barnardo's Scotland is concerned that specific legislation which was designed to tackle child sexual exploitation (CSE) -the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005ⁱ- has been little used to bring perpetrators to justice. We are concerned that child victims of sexual exploitation are not being afforded the protection of the criminal justice system as they should be.
- The 2005 Act created a new grooming offence (section 1), introduced offences relating to sexual services of children and child pornography (sections 9-14), and introduced civil preventative orders such as Risk of Sexual Harm Orders (sections 2-8) and Sexual Offence Prevention Orders (section 17). *See Appendix 1 for details of key CSE related offences/tariffs.*
- From the range of offences created by the 2005 Act, there have only been a total number of **42** prosecutions.ⁱⁱ
- Offences designed to tackle CSE, those relating to sexual services of children and child pornography, are currently very little used: there have been only **2**ⁱⁱⁱ convictions for charges under the offence of 'payment for sexual services of a child' (section 9); only **4** convictions for charges for 'causing or inciting provision by a child of sexual services or child pornography' (section 10); and, **0** reports made to the Procurator Fiscal under 'arranging or facilitating provision by a child of sexual services or child pornography' (section 11).
- There have only been 70^{iv} convictions for grooming charges (section 1), despite 237 charges being reported to PF. It is not clear that that the section 1 grooming offence is being prosecuted successfully and treated as an offence in its own right. It is Barnardo's experience that grooming should be treated seriously when identified, as the intended outcome is always the sexual abuse of a child. There appears to be a 'loophole' in the section 1 grooming offence which may be making prosecution of this offence problematic in some cases, in Scotland, due to issues of borders and jurisdiction.
- The Public Petition's Committee Inquiry into CSE recommended post-legislative scrutiny of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 to be undertaken, to ensure that the intention of this legislation is being delivered and that all possible perpetrators of CSE crimes are being prosecuted.^v
- Due to the vulnerability of child victims of sexual exploitation, prosecuting CSE may be particularly challenging for the criminal justice system. However, all must be

done to ensure that barriers to bringing perpetrators to justice are overcome. Following the scale of CSE uncovered in Rotherham, we must ensure that legislation and systems in place are fit to protect children from sexual exploitation in Scotland.

What can the Justice Committee do?

We ask the Justice Committee to take all steps within its power to address the lack of prosecutions of CSE, and to:

- Conduct post-legislative scrutiny of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
- Seek a review, in order to identify and establish what the barriers to prosecution of perpetrators of CSE are, and that steps are taken to ensure that they are overcome;
- Request that the COPFS instigate a review into the treatment and support of CSE (and all child sexual abuse victims) within the Scottish courts.

Areas that the Justice Committee may wish to explore:

- Reasons as to why the 2005 Act appears to be so little used.
- To what extent the lack of use of the 2005 Act means that it is ineffective; or, that CSE is not being addressed effectively by the criminal justice system in Scotland.
- Whether the 2005 Act provides Police and COPFS with sufficient powers to tackle grooming.
- The challenges Police Scotland face in identifying, investigating and charging perpetrators with offences under the 2005 Act.
- What processes within the criminal justice system may mean that perpetrators of CSE are not being brought to justice, e.g processes around libelling of charges.
- What is in place to support vulnerable victims of CSE through the court processes, and if these are sufficient.
- Whether there needs to be an in-depth review by COPFS/Police Scotland into the prosecution of perpetrators of CSE in Scotland.

Barnardo's Scotland Background Briefing

Introduction

Barnardo's Scotland has been providing services for victims of child sexual exploitation (CSE), since the early 1990s. In recent weeks, child sexual exploitation has had a heightened profile, following the publication of the Rotherham Independent Inquiry Report. Professor Alexis Jay, author of the Report, and previously, Chief Social Work Advisor to the Scottish Government, estimated that 1400 children had been sexually exploited from 1997-2013 in the South Yorkshire town.^{vi} Barnardo's Scotland has had a long-standing concern that the perpetrators of this vile abuse are currently not being brought to justice as effectively as we would like. We hope scrutiny of legislation and practice by the Justice Committee will play an important role in identifying if this is the case, and what can be done about it.

What is Child Sexual Exploitation?

CSE is a form of child sexual abuse. In practice, the sexual exploitation of children (under 18) occurs where children are coerced, manipulated, forced or deceived into performing and/or others performing on them, sexual activities in exchange for receiving some form of material goods or other entity, such as food, accommodation, drugs, alcohol - or, simply, in some cases, what is perceived to be 'love' and affection. In all

cases those exploiting the child have power over them by virtue of their age, gender, intellect, physical strength and /or economic resources. Sexual exploitation can occur through the use of technology without the child's immediate recognition.

What do we know about Child Sexual Exploitation in Scotland?

Children are being sexually exploited across Scotland. Agencies, including Social Work, Police Scotland, Education, Health, and Third Sector organisations, routinely identify children and young people at risk of, and those who are victims of, sexual exploitation. This process has been strengthened a great deal by the response of agencies to the issues highlighted by the Public Petition's Committee, who, following successful campaigning by Barnardo's Scotland, held a Parliamentary Inquiry into CSE in 2013. In response to the work of the Petition's Committee, the Scottish Government commissioned research on CSE in Scotland^{vii}, committed to developing a National Action Plan on CSE, and refreshed National Child Protection Guidelines.^{viii} This has all helped to ensure that CSE is now properly recognised as a child protection issue. There is, however, a long way to go.

Martin Crewe, Director of Barnardo's Scotland, stated recently:

"While there is good work ongoing to tackle child sexual exploitation, we cannot be so naive to think that CSE occurs in isolated incidents, or that it is not happening to children in cities, towns and villages, all over Scotland."^{ix}

The key finding of the Scottish Government commissioned research published in 2012 was that CSE in Scotland reflects what has been found in the rest of the UK.^x In many ways the only difference between Scotland and other parts of the UK is the absence of high profile court cases of CSE coming to public attention. Since 2011, Glasgow has seen two significant Police Operations to tackle CSE, Operation Cotswold, which concluded in 2012, and Operation Dash, which is still ongoing. There have been a low number of prosecutions of perpetrators of CSE in the Scottish Courts, which is not proportionate to what we suspect is the scale significant scale of the problem. There may be a number of interlinking reasons for this, but the idea that CSE is not happening in Scotland is not one of them.

Underuse of legislation

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 ('the 2005 Act) was introduced, in part, to tackle CSE. We are concerned that the 2005 Act is currently little used.

The 2005 Act made grooming an offence (section 1), made provision for civil preventative orders such as Risk of Sexual Harm Orders (sections 2-8) and Sexual Offence Prevention Orders (section 17), as well as offences relating to sexual services of children and child pornography (sections 9-14).

A recent PQ submitted by Justice Committee Member, Margaret Mitchell MSP, asking the Scottish Government how many prosecutions and convictions there have been under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, revealed that from among the Act's range of provisions, there have only been 42 prosecutions under the 2005 Act.^{xi}

Those key provisions designed to tackle circumstances of CSE, those offences relating to sexual services of children and child pornography, appear to be particularly under

used. Since the introduction of the 2005 Act, nearly a decade ago, Barnardo's Scotland is aware of:

- Only **2** convictions^{xii} for charges under the offence of 'payment of sexual services of a child' (section 9, 2005 Act).
- Only **4** convictions for charges under the offence 'causing or inciting provision by a child of sexual services or child pornography' (section 10, 2005 Act).
- **0** reports to the Procurator Fiscal under 'arranging or facilitating provision by child of sexual services or child pornography' (section 11, 2005 Act).

However, 2005 Act is not the only piece of legislation in Scotland that is used to tackle CSE. The Sexual Offences (Scotland) Act 2009, appears to be a better known set of powers used by Police and is favoured by Prosecutors as many of its offences carry higher tariffs.

Our view is that the reasons for the apparent underuse of the 2005 Act are not understood: it may be that the legislation is ineffective, and/ or, that CSE is not being tackled effectively in Scotland. Moreover, it is difficult to estimate the scale of the issue, to link cases with CSE, and so to identify patterns of abuse or perpetrators who are 'networked' and engaged in localised grooming in Scotland, if the 2005 Act is being bypassed in favour of other provisions.

Has the section 1 'grooming' offence been effective?

Tackling grooming is key to tackling CSE.

The Director of Prosecutions for England and Wales, in issuing guidance on prosecuting cases of child sexual abuse, defines grooming in the following way:

'Grooming' is not a specific form of child sexual exploitation but should be seen as a way in which perpetrators target children and manipulate their environments. It is an approach to exploitation and may be the beginning of a complex process adopted by abusers. Grooming can be defined as developing the trust of a young person or his or her family in order to engage in illegal sexual activity or for others to engage in illegal sexual activity with that child or young person.^{xiii}

There was much discussion of the Section 1 Grooming offence during the passage of the 2005 Bill through Scottish Parliament, and whether it would enhance the ability of the police and prosecutors to bring to trial "predatory paedophiles who use the internet to groom their intended victims".^{xiv}

Since the 2005 Act created the offence of grooming in Scotland, we are aware that there have been:

- 70^{xv} convictions for grooming charges, despite 237 charges being reported to PF. The actual number of convicted persons could be even lower as we do not know what this figure equates to in terms of numbers of accused persons/numbers of prosecutions.

A number of those charges were not taken forward for a variety of reasons, including that the grooming charge itself may not have been prosecuted separately, but has become part of the narrative of an offence attracting a higher tariff, a rape charge, for example.

Given the rapid developments to social networking, apps, dating sites and online gaming, and the speed at which grooming can move from online activity to sexualised contact, we are concerned that the current grooming legislation is not effective in protecting children or disrupting predatory perpetrators.

It is Barnardo's experience that grooming should be treated seriously when identified, as the intended outcome is always the sexual abuse of a child.

As we said in our discussion paper, 'Lessons for Scotland from the Jay Report into Child Sexual Exploitation in Rotherham':

Grooming is an offence in Scotland that carries with it a punishment of up to 10 years imprisonment. Grooming must be regarded as a serious offence in its own right, and not merely as 'part of the narrative' of a child's abuse.

There is always intent to exploit and abuse, and grooming is therefore the beginning of a process that ultimately leads to child sexual abuse. Once abuse takes place however, and the longer it goes on, the harder it is to pull that child back.^{xvi}

We are concerned that a significant number of grooming offences may not be being prosecuted within the courts, but rather, as the Lord Advocate has explained, become "part of the narrative"^{xvii} for a more serious charge. We suspect that this was not the intention behind the legislation; the 2005 Act created the offence of grooming as it was recognised that perpetrators manipulate children in order to engage them in illegal sexual activity. Although the Lord Advocate has stated that the COPFS does not try to "bypass section 1", he also affirmed that the process at work within the system is "just the way in which charges have always been labelled in relation to criminal law in Scotland".^{xviii}

Barnardo's Scotland would consider that, if it is the case that the criminal justice system is not able to effectively respond to CSE, some in-depth review should be undertaken to identify what the barriers to prosecution are, including those that may be inherent in the system. What can be done to overcome these barriers should also be identified so that victims of CSE are afforded the protection of the criminal justice system.

Section 1 'grooming' offence - a 'loophole'?

In the course of giving evidence to the Public Petition's Committee, the Lord Advocate requested that legislation on grooming be attended to:

"I would be grateful if the committee would consider one thing: if someone grooms in Scotland and abuses in France, we can prosecute, in Scotland, the abuse in France and the grooming in Scotland. However, if they groom in Scotland and abuse in England and Wales, we can prosecute only the grooming in Scotland; we cannot prosecute the abuse in England and Wales. This is an issue with which we have had difficulties in the past."^{xix}

We would suggest that this would appear to be a 'loophole' in the legislation which, in itself, warrants post-legislative scrutiny of the 2005 Act.

Why have there been so few successful prosecutions of perpetrators of CSE in Scotland under the 2005 Act?

Barnardo's Scotland acknowledges that there are challenges to prosecuting cases of CSE, which may be due to any of the following: a lack of awareness of CSE among frontline practitioners (and the general public) which means CSE is not identified; issues with vulnerable victims of CSE presenting as 'credible' witnesses in Court; challenges from the need for corroboration in proving sexual offences; children not recognising their own exploitation due to sophisticated grooming and manipulation by perpetrators; and, underuse/a lack of awareness of/ineffective legislation in place to tackle CSE.

Some of these challenges were highlighted in evidence given by Police Scotland, the Lord Advocate and COPFS to the Public Petitions Committee.^{xx} Notably, however, the Petition's Committee were unable to ascertain what was happening within the criminal justice system that meant legislation designed to tackle CSE was being so little used:

*"(...) the Committee remained dissatisfied about the depth of understanding the responses gave, both about under-use of certain provision and about the reasons why in many cases prosecution did not take place. **It is not adequate simply to list, however comprehensively, reasons why prosecution might not occur, without giving some information about how, how often and for what reason certain of these decisions were taken in relation to CSE.**"^{xxi}*

There is still further work to do to establish fully what the barriers to prosecution of perpetrators of CSE are, why the 2005 Act is so little used, and what steps need to be taken to ensure that perpetrators of CSE receive a robust criminal justice response.

Is enough being done in Scotland to tackle CSE and bring perpetrators to justice?

The Rotherham Inquiry is a wake-up call in this respect. The numbers of prosecutions of perpetrators in Rotherham was extremely low. The Jay Report notes that, in Rotherham, as with Scotland, there is no standardised reporting of CSE that would give an indication of prevalence. However, the Report is clear that the number of prosecutions involving CSE was disproportionate to the scale of the problem. Furthermore, the seriousness of the abuse those children suffered, (and in some cases are continuing to suffer) was also not addressed by the criminal justice system.^{xxii}

Following the revelations from the Rotherham Inquiry, all possible action must be taken to ensure that legislation and systems in place are fit to protect children from sexual exploitation in Scotland.

Mark Ballard
Head of Policy
Barnardo's Scotland
30 September 2014

Barnardo's Scotland Appendix 1

**Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005-
Offences and Tariffs**

Offence	Summary Fine	Summary Conviction	Indictment Fine	Indictment Conviction
Meeting a child following certain preliminary contact – grooming (Section 1)	Yes*	6 Months	Yes	10 Years
Breach of Risk of Sexual Harm Order (RSHO) or Interim RSHO (Section 2-8)	Yes*	6 Months	Yes	5 Years
Paying for sexual services of a person aged 16 or over (Section 9)	Yes*	6 Months	No	7 Years
Paying for sexual services of a person aged under 16 (Section 9)	Yes*	6 Months	No	14 Years
Causing or inciting provision by child of sexual services or child pornography (Section 10)	Yes*	6 Months	No	14 Years
Controlling a child providing sexual services or involved in pornography (Section 11)	Yes*	6 Months	No	14 Years
Arranging or facilitating provision by child of sexual services or child pornography (Section 12)	Yes*	6 Months	No	14 Years

*A fine not exceeding the statutory maximum

ⁱ 'The 2005 Act'

ⁱⁱ Question S4W-21608: Margaret Mitchel, Central Scotland, Scottish Conservative and Unionist Party, Date Lodged: 04/06/2014. Answered by Kenny MacAskill, on 18/06/2014.

ⁱⁱⁱ Figures taken from Sunday Post Freedom of Information request on the use of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, from April 2014- 5 March 2014.

^{iv} *Ibid.*

^v Scottish Parliament (2014). *Public Petitions Committee 1st Report, 2014 (Session 4) Report on tackling child sexual exploitation in Scotland*. Para. 50, p.7.

^{vi} Jay, A. (2014) Independent Inquiry into Child Sexual Exploitation in Rotherham 1997-2013. Rotherham Council. P.1.

^{vii} Brodie, I., and Pearce, J. (2012) *Exploring the Scale and Nature of Child Sexual Exploitation in Scotland*. Scottish Government.

^{viii} Scottish Government (2014). National Guidance for Child Protection in Scotland. Scottish Government.

^{ix} Barnardo's (2014) *Lessons from Scotland from the Jay Report into Child Sexual Exploitation: A Barnardo's Scotland Discussion Paper*, available at: http://www.barnardos.org.uk/learning_the_lessons_from_the_jay_report_into_child_sexual_exploitation_in_rotherham_for_scotland.pdf, p.8.

^x Brodie, I., and Pearce, J. (2012) *Exploring the Scale and Nature of Child Sexual Exploitation in Scotland*. P.46.

^{xi} Question S4W-21608: Margaret Mitchel, Central Scotland, Scottish Conservative and Unionist Party, Date Lodged: 04/06/2014. Answered by Kenny MacAskill, on 18/06/2014.

^{xii} Figures taken from Sunday Post Freedom of Information request on the use of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, from April 2014- 5 March 2014.

^{xiii} Crown Prosecution Service (2013) *Guidelines of Prosecuting Cases of Child Sexual Abuse*, p.45.

^{xiv} Scottish Parliament (2005). *Justice 1 Committee, 5th Report, 2005 (Session 2) Protection of Children and Prevention of Sexual Offences (Scotland) Bill*, Para 91, p.61.

^{xv} Figures taken from Sunday Post Freedom of Information request on the use of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, from April 2014- 5 March 2014.

^{xvi} Barnardo's (2014) *Lessons from Scotland from the Jay Report into Child Sexual Exploitation: A Barnardo's Scotland Discussion Paper*, p.10

^{xvii} Evidence from the Lord Advocate, in The Scottish Parliament (2014) *Official Report Public Petitions Committee, Tuesday 25 June 2013, Session 4*, p. 1498.

^{xviii} *Ibid.*

^{xix} The Scottish Parliament (2014) *Official Report Public Petitions Committee, Tuesday 25 June 2013, Session 4*, p. 1512.

^{xx} The Scottish Parliament (2014) *Official Report Public Petitions Committee, Tuesday 25 June 2013, Session 4*.

^{xxi} Scottish Parliament (2014). *Public Petitions Committee 1st Report, 2014 (Session 4) Report on tackling child sexual exploitation in Scotland*. Para 190, p.40.

^{xxii} Jay, A. (2014). P. 37.