



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

**Protection of Freedoms Bill:
Legislative Consent Motion
Northern Ireland Commissioner for
Children and Young People**

8 June 2011

NORTHERN IRELAND ASSEMBLY

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HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

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Northern Ireland Commissioner for Children and Young People**

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Members present for all or part of the proceedings:

Ms Michelle Gildernew (Chairperson)
Mr Jim Wells (Deputy Chairperson)
Ms Michaela Boyle
Mr Mickey Brady
Mr Gordon Dunne
Mr Mark H Durkan
Mr Sam Gardiner
Mrs Pam Lewis
Mr John McCallister
Mr Kieran McCarthy

Witnesses:

| | | |
|------------------------|---|---|
| Ms Patricia Lewsley |) | Northern Ireland Commissioner for Children and Young People |
| Ms Jacqueline Melville |) | Office of the Northern Ireland Commissioner for Children and Young People |

The Chairperson:

I am delighted, at very short notice, to welcome the Commissioner for Children and Young People, Patricia Lewsley, and Jacqueline Melville. I am sorry for putting you on the spot, but I thought that it was crucial that you give evidence to the Committee today about the Protection of Freedoms Bill.

Ms Patricia Lewsley (Northern Ireland Commissioner for Children and Young People):

Thank you for the invitation to give evidence today. I offer my congratulations to everyone around the table, especially new members of the Committee for Health, Social Services and Public Services. For those new members, I will briefly explain my role. My principal aim, which is set out in legislation, is to safeguard and promote the rights and best interests of children and young people. Among other powers and duties, my mandate is to keep under review the adequacy and effectiveness of law practices and services relating to the rights and best interests of children and young people. Of course, I have to give paramount consideration to the United Nations Convention on the Rights of the Child.

Vetting and barring has been an ongoing issue and priority for the Northern Ireland Commissioner for Children and Young People (NICCY). In fact, we did research in 2005 for the Secretary of State and followed up with a report in 2007 and a submission to different stages of legislative and policy development in this area in relation to the devolved Administration and the UK Government. As you outlined, we made submissions to the Protection of Freedoms Bill and the Criminal Records (Public Access) Bill. We would be delighted to share those with the Committee if it saw a need for that and if it would help in any way.

Last year, we had a Make it Right campaign. Each month, we selected a theme, and on the twelfth month, we picked the theme of protecting children. That gives information about the Safeguarding Board and other issues, and we will leave some literature with the Committee Clerk if that would help.

Much work is being done to review and revise arrangements about vetting and barring. The Northern Ireland Assembly, through a legislative consent motion in the previous mandate, allowed many provisions of the UK Government Protection of Freedoms Bill to have territorial extent in Northern Ireland. In the previous mandate, I raised concerns with the then Health Minister and the Committee about some of the provisions and welcomed commitments to strengthen aspects of how proposals could operate in Northern Ireland. I also submitted evidence to the Westminster Public Bill Committee, which scrutinised its legislation and detailed outstanding concerns about the Bill.

In parallel with that process, the Department of Justice is conducting a review of the criminal

records regime, taking account of the provisions of the Protection of Freedoms Bill, which addresses the management of criminal information and records on vetting and barring but which does not have territorial extent in Northern Ireland. I met Sunita Mason, who is leading the review, and submitted a response highlighting areas in which the review must ensure that there is careful consideration of changes to the sharing and management of criminal records information.

Although those developments may run across the remit of different legislative bodies and Departments, it is important that debates do not become fragmented and that politicians and officials maintain a rounded and holistic view on current developments and their implications. Therefore, although I appreciate the fact that the Committee is considering the draft legislative consent motion, which relates specifically to the establishment of a new Disclosure and Barring Service, I want to take the opportunity to discuss vetting and barring more broadly.

Vetting and barring regimes play a key role in the arrangements to protect children and young people from abuse by seeking to ensure that adults who pose a risk to children are not placed in roles, paid or voluntary, that may enable them to establish relationships of trust, which may then be exploited. The arrangements that are being reviewed and revised were developed following the Bichard inquiry after the murder of Jessica Chapman and Holly Wells in Soham by Ian Huntley in 2002. Research tells us that if children are abused, it is most likely to be at the hands of adults whom they know. Often they are family members, but sometimes they are people in positions of trust, such as staff members and volunteers.

The inquiry identified a need to strengthen the way in which employers recruit staff and volunteers. The UK Government, and de facto the devolved Administrations, as a signatory to the United Nations Convention on the Rights of the Child should ensure that the general principles of the convention, including the paramountcy of the child's best interests and the right to life and to the fullest level of development, are reflected in vetting and barring arrangements. The convention places an explicit obligation on government to take all legislative, administrative, social and educational measures to protect children and young people from all forms of violence, abuse, maltreatment or exploitation. Ensuring that vetting and barring arrangements operate to the highest standards offers an important opportunity to fulfil that commitment.

I want to give some examples of where current debates on vetting and barring are of particular importance and areas of concern for us. One of those areas concerns young people aged 16 and

17. I warmly welcome the commitment by the former Health Minister under the previous mandate and, latterly, UK Government Ministers to place activities with young people aged 16 and 17 in settings such as education within the scope of the vetting and barring arrangements. That was a deeply concerning omission in the proposals, but that commitment now ensures that such young people are in line with the definition of a child as being up to 18 years of age, as set out in the UN convention and domestic legislation, and recognises the fact that all children and young people across that age grouping should be afforded the same level of protection.

Our submission to the Public Bill Committee on the Protection of Freedoms Bill expressed concerns that the restricted definition of regulated activity excludes a number of positions that involve frequent and ongoing contact with children, such as supervised teaching, training, instruction and care provision. That affects volunteer posts in schools, faith groups and sporting organisations. Those excluded roles are trusted positions in which adults can build close relationships with children whom they may seek to harm. Although the legislation understands that those supervised roles do not present the same level of risk to children or require the same records disclosure, the definition of supervision must be robustly defined, as called for by organisations such as the National Society for the Prevention of Cruelty to Children (NSPCC), whose representative will make a presentation after us, and the Sport and Recreation Alliance. As current processes at Westminster and in Northern Ireland consider whether vetting and barring can be scaled back or made more proportionate, it is important that that does not take precedence over the primary focus of ensuring that vetting and barring provides high levels of protection for children and young people.

Another area of concern is that, under proposals in the Protection of Freedoms Bill, criminal records checks for posts outside regulated activity will provide only limited information and will not disclose whether the Independent Safeguarding Authority (ISA) has barred an individual or shared information held by ISA with the police and others. That may lead to situations in which, for example, an individual barred from a regulated activity such as teaching could apply to be a volunteer classroom assistant, which is an unregulated post, without the employer receiving barring or other information of concern from ISA. We have highlighted that it is important for the current Department of Justice review of the criminal records regime to reflect on how to make sure that such gaps do not exist in Northern Ireland's safeguarding arrangements.

We have also noted our concerns that the proposals in England and Wales will mean that

individuals will be placed on barred lists only if they have been, will be or are likely to be engaged in regulated activity. As posts such as volunteer assistants, sports coaches and teaching assistants are not within the scope of regulated activity but involve substantive and ongoing levels of contact with children, we feel that that is a high threshold and is not really appropriate.

In considering the disclosure and sharing of information in more detail, we have noted that it is important that relevant, non-conviction information is available as part of this process. For example, although many adults who pose a risk to children do not have a conviction in relation to this issue, information provided through police intelligence and the Independent Safeguarding Authority may provide evidence that the individual should not be in direct contact with children or young people. The Protection of Freedoms Bill proposals will develop a statutory code of practice for the sharing of reasonably relevant non-conviction information, which we welcome in principle.

In our meeting with Sunita Mason, we highlighted the importance of considering how the sharing of conviction and non-conviction information across national borders can be progressed. As the only jurisdiction in the UK with a land border with another EU member state, we are acutely aware of the need to ensure that vetting and barring arrangements operate effectively across borders. For example, police intelligence is currently not shared between Northern Ireland and the Republic of Ireland, and we are aware that that is an area about which the Health Committee in the previous mandate expressed concern.

Although there are a number of other issues that we raised in our submission on the Protection of Freedoms Bill and our criminal records regime review response, we hope that we have provided a broad overview of the issues that we would like to focus on in areas that relate more directly to the legislative consent motion.

Our understanding of the legislative consent motion is that it is concerned only with the provisions that the UK Government introduced to the Protection of Freedoms Bill late during its Committee Stage. Those provisions allow for the merging of the Independent Safeguarding Authority and the Criminal Records Bureau into one new body — the Disclosure and Barring Service.

In Northern Ireland, AccessNI has provided the disclosure service for Northern Ireland, which

is the Criminal Records Bureau in England and Wales, and ISA provides the barring service. ISA maintains the list of individuals who are barred from engaging in regulated activity with children and young people, assesses referrals about individuals who are seeking to work in regulated activity who may pose a risk to children and young people and makes decisions about whether to remove an individual from a barred list. AccessNI and ISA work together to share barred list information for disclosure purposes.

Under the proposals, we understand that AccessNI will continue to operate the disclosure service, and the new Disclosure and Barring Service, into which ISA will be subsumed, will provide the barring function. The details of how that will operate are still being explored, such as whether the Disclosure and Barring Service will provide the continuous updating function of checks to ensure that they are portable. It will be helpful to have details of the proposed arrangements between AccessNI and the Disclosure and Barring Service as they develop.

Based on the information that we have received to date, we do not have any substantive concerns regarding the legislative consent motion and the changes that it will facilitate. We need to ensure that those changes are well planned and adequately resourced. They should be well supported, as should some of the positive new developments in the proposals to revise vetting and barring arrangements. For example, we support the move to ensure that criminal records checks are continuously updated and are portable and, therefore, will transfer with individuals across similar roles and organisations. That would be a progressive step in simplifying the arrangements and making the regime more proportionate by controlling the number of repeat checks required, which we have seen in the past. However, we note that only limited information appears on checks for unregulated positions. As was raised earlier, disclosures for posts across regulated and non-regulated activity, even within the same organisation or sector, will not be portable.

We support the moves to develop an online system as part of the changes but point to the need to ensure the security and integrity of that system. To provide continuous updating through the new system, it is also important that employers are provided with relevant new information in a timely manner and that organisations have access to the most current data on individuals. For example, we must make sure that employers are prompted to request a new check when new information becomes available. The Committee may wish to clarify some details that were raised at the Westminster Public Bill Committee by Jim Shannon MP as details are agreed to — for instance, to ensure that the new Disclosure and Barring Service will have a Northern Ireland

member and to ask how information gathered by the new body can be used thematically to develop and strengthen arrangements further.

Although our comments on the legislative consent motion have been limited, we hope that the Committee has found it helpful to have a broader overview of the current debates on vetting and barring. Vetting and barring arrangements must ensure that standards for the recruitment of paid staff and volunteers who are entrusted to work with children and young people provide high levels of protection in Northern Ireland. As the legislative consent motion moves forward, the Protection of Freedoms Bill continues its legislative passage and the Department of Justice review of the criminal records regime concludes, debates on those issues must ensure that a clear focus is maintained on the protection of children and young people, and changes must not dilute or fragment the levels of protection afforded to children and young people in Northern Ireland. Vetting and barring arrangements are only one element to how we ensure that children are safeguarded, and we hope that the Committee will continue to monitor that area closely. Certainly, under my statutory duty, I will monitor it continuously.

The Chairperson:

Is it your view that the legislative consent motion is likely to miss the opportunity to strengthen the arrangements if the Department goes ahead with it in its present form?

Ms Lewsley:

No. We have not done any in-depth work on that, but, on the face of it, we think that it should proceed because it provides the Northern Ireland-specific arrangements for AccessNI and the Independent Safeguarding Authority.

The Chairperson:

It is still the case that hard information will be shared across the border but that, at present, soft information will not be shared.

Ms Lewsley:

That is more to do with the criminal records review and the issue of sharing information across the border. That mechanism needs to be set up to ensure that that information flows freely from both sides. However, the legislative consent motion is totally different. It is about the structure that needs to be put in place in order for some of that to happen.

Ms Jacqueline Melville (Office of the Northern Ireland Commissioner for Children and Young People):

We certainly acknowledge the complex, almost jigsaw-like, developments in vetting and barring. The Protection of Freedoms Bill is housed in Westminster, and, in the previous mandate, there was a legislative consent motion about that. New aspects of the provisions came very late to the Bill and are very narrowly defined. Our understanding is that, in this legislative consent motion, they are specifically related only to the provisions on the establishment of the new Disclosure and Barring Service, which, provided it develops in a well-planned and adequately resourced way and we ensure that its relationship with AccessNI is well developed, should progress some of the positive aspects of the Protection of Freedoms Bill, such as how to have continuous updating of disclosure information about individuals and how to move towards a system in which disclosure checks are more portable.

For example, at present, if I apply to work with the Children's Commissioner, I will need a disclosure check. If I also apply to volunteer with a children's charity, I will need a disclosure check. If I apply for a new job that requires me to have a disclosure check, I will need a new check. There is the difficulty of multiple checks potentially being required and, without the system being continuously updated, it is difficult to lessen that. However, as we move towards a new model, the system can become more proportionate and ensure that the checks remain up to date. Currently, for example, a check received about me today would be out of date next week because it would not contain information after the date of the check — if that makes sense.

In our presentation, we have tried to touch more broadly on some other aspects of vetting and barring developments, to note and address areas in which we have seen positive and welcome changes and to highlight issues about which we have ongoing concerns and where NICCY will continue to monitor government.

The Chairperson:

So instead of multiple checks for different organisations or agencies being necessary, one check will do, but the resources and time will then be spent on ensuring that that check is up to date and that any new issues are factored in properly and in a timely way. Are organisations that have asked for checks informed if there is an update? For example, if you, Jacqueline, go out and do something, and the PSNI knows about it and convicts you, do the police go back to all the

organisations that have looked for a check? I presume that that is why each individual organisation had to apply in the past. If one check is sufficient, and someone decides, for example, to start working with an amateur theatre company or with children, how do people know where that person is working so that they can monitor and scrutinise to ensure that there is no loophole that he or she can get through?

Ms Lewsley:

That is what we are saying: there needs to be a commitment to ensure that that does not happen. For instance, Jacqueline is working for me today. If something happens that should not have happened and she decides to leave and move on, that information would be shared with her new employers so that they are made aware of it. However, if she were carrying a portable check, that information would not be on it from one week to the next. It is about ensuring that all the information is put on the portable check for any future checks. That is where the importance lies.

Another concern for us is the issue of being regulated or unregulated and the people who fall out of the regulated side. Hypothetically, if a teacher were found guilty of doing something inappropriate, he or she could then volunteer somewhere that will not undertake a check so that information would not be thrown up. Those are positions in which children could be vulnerable; people who could groom young people could be allowed into positions that they should not have been allowed into in the first place because information has not been shared or they are not being vetted.

Ms Melville:

That is a clear illustration of some of our broader concerns. We want to take the opportunity to share those with the Committee rather than issues that specifically relate to the legislative consent motion.

Comments were made earlier about the sharing of information across the border; we raised that issue strongly with the criminal records regime review that is being undertaken by Sunita Mason for the Department of Justice. We expressed our concern that the terms of reference for that review did not reflect the specific needs and circumstances of Northern Ireland, particularly for the land border but also in relation to consideration being given to examining how criminal offences and conflict-related offences would be managed in the system. We hope that the review will undertake to examine that.

Mr Wells:

This issue has come up several times in Committee, particularly during the Committee Stage of the Safeguarding Board Bill. The sad thing is that all recent history has shown that those involved in such activities drift across the border regularly, be it clerical sex abuse or people working in schools or other areas. For example, if I am living in Strabane and commit an offence, I am registered, and AccessNI will immediately pick that up. I may then drift into Lifford, all of 500 yards across the border, and become involved as a volunteer in a youth group. I may then be thrown out of that for totally inappropriate behaviour but not be convicted. I may wander back into Strabane and take up another paid role. None of that information follows me. Therefore, what the legislative consent motion is trying to achieve is almost totally negated by the fact that people can drift back and forwards across the border, as such individuals do regularly — they perhaps have a higher propensity for doing that than ordinary folk. Surely that drives a coach and horses through what the legislative consent motion is trying to achieve.

Ms Lewsley:

The legislative consent motion is more about looking at the structures that need to be put in place for Northern Ireland to share that information. At present, those structures are AccessNI and the Independent Safeguarding Authority. We then have to look at how we work to ensure that we share information across the border. I am not sure that our not supporting the legislative consent motion would strengthen the lines of communication and sharing of information that needs to happen across the border.

Mr Wells:

Should we as an Assembly not use this motion as an excuse to highlight once again the fact that the border is entirely porous as far as this issue is concerned? What happens the other way round? Does any intelligence follow someone from Northern Ireland into the Republic as opposed to from the Republic into Northern Ireland?

Ms Lewsley:

Not that I am aware of. We just have to look at the recent case of someone who was convicted here and went across the border to Dublin. Even though he was on the sex offenders register here, all that he had to do was notify the local gardaí to say that he was in the jurisdiction. They had no control over him. They were just aware that he was there.

Mr Wells:

However, someone with no conviction has no requirement to register with the guards, even if there is strong soft intelligence about him.

Ms Lewsley:

No. He would not actually register with the guards. All that he has to do is notify them that he is there. There is nothing that they can do about it. They cannot arrest him because he has been convicted in another jurisdiction.

Ms Melville:

The Committee is touching on an incredibly important part of safeguarding children and young people in Northern Ireland as a whole. One illustration of that relates to vetting and barring and the sharing of information across the border. Our understanding is that conviction information is shared but that local police intelligence is not. The commissioner has highlighted that a number of times.

We also ask the Committee to be mindful that, in relation to Northern Ireland's borders and relationship with jurisdictions in other parts of the UK, the legislative consent motion will ensure that a new body is put in place that will share disclosure information that is not necessarily conviction-related or information of which the police are aware. From our point of view, standing back and taking a holistic look at steps to be taken to ensure that children and young people in Northern Ireland are well protected, it is important that the legislative consent motion proceeds so that the new Disclosure and Barring Service is able to work with AccessNI to ensure that, for checks for adults from Northern Ireland, England and Wales, non-conviction information is known and that employers and organisations are able to make safer recruitment decisions.

It is important that the Committee does not leave aside the issue of the border. You may find it helpful to ask for details and information on how that work is being progressed through the North/South Ministerial Council.

Mr Wells:

The sad thing is that there already was soft intelligence on everyone who is eventually convicted, some of which was accrued on either side of the border. It is not really much good putting the

motion through if we cannot protect young vulnerable adults and children from attack by people who just happen to have drifted a few hundred yards either side of a line on a map. It seems extraordinary that we have not yet solved a problem that has been with us since the day and hour that I first sat on this Committee.

Ms Lewsley:

The issue was there well before that, Jim. When I was an MLA, it was an issue that I raised constantly around child protection. We have had cross-border conferences since Shaun Woodward was the Minister with responsibility for health, and the issue has been raised constantly. Work needs to be done at the level of the North/South Ministerial Council. Previous Health Ministers have raised the issue, but it is important that the Committee and the Assembly push it forward to try to get some change.

Ms Melville:

It may also be helpful for the Committee to consider making the Committee for Justice aware of your concerns. The commissioner touched on the fact that although developments in vetting and barring arrangements are happening in different jurisdictions and are within the remits of different Departments in Northern Ireland, it is incredibly important that the debate does not become fragmented and that concerns are shared in a joined-up way across government. All parts of government have a responsibility to work together to ensure that children are protected as effectively as possible.

The Chairperson:

I am going to bring in Michaela, unless anyone has a burning desire to ask a question. The girls have been very patient, and we are mindful of that fact that Colin Reid is also going to give us his view. I do not want to keep people too long.

Ms Boyle:

The Deputy Chair almost stole my thunder with a similar question, so I will be brief. I thank him for mentioning Strabane, my hometown.

Patricia, I am appalled at what I am hearing. As a former member of Strabane District Policing Partnership, I believe that I have been given misleading information because I thought that that happened and that information was given over. I appreciate that criminal records, and so

on, are shared. I live close to the border and believed that that information was sought between the Garda Síochána and the PSNI and that even small pieces of information were exchanged. I know what happens locally between the PSNI and the Garda Síochána on the dissident threat in the border area, and the tiniest, most minute piece of information is given over. I was led to believe that the same practice is in place for sex offenders. I will refer that back to my district policing partnership. We should also write to the Justice Minister and to the North/South Ministerial Council to let them know of our concerns.

The Chairperson:

We would probably do well to join up with the Justice Committee for a dedicated session on the issue. We need those protections across the border. There is no point in throwing the baby out with the bath water and not having those protections from an east-west point of view, but I wonder whether it is a vehicle for tagging on the all-Ireland element to enable us to afford full protection for children. Clearly, you are saying that the legislative consent motion is not the vehicle to do that. You are saying that it needs to be done but that the legislative consent motion is not the vehicle for it. Is that correct?

Ms Lewsley:

Not letting the legislative consent motion through will not change what you are looking for. As Jacqueline said, it is about the bigger picture and our opportunity to share information with the rest of the UK. We have known of people coming from England and other places to Northern Ireland in the past, and we were not aware that they had had a conviction elsewhere. It is about the wider sharing of information, and cross-border sharing between Northern Ireland and the South of Ireland has been a big issue for a long time. The issue needs to be grasped and followed through to get something positive out of it. As the Deputy Chair said, it has been an issue for a number of years and does not seem to be getting resolved.

The Chairperson:

Jacqueline and Patricia, thank you for your time and for coming to the Committee at very short notice. The session has been very helpful. I suspect that we will talk about the issue again. Thanks a million.