

HAMILTON CONSULTANCY



Submission to the Justice Committee on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

26th October 2013

Submission by Lois Hamilton, Solicitor : Profile/Specialist Experience

I qualified from Queens University, Belfast in 1992 with a law degree and worked in a small general legal practice in Belfast.

In or around 2000 I started work in the voluntary sector with the Law Centre (NI) and remained employed as a legal advisor in the Law Centre (NI) up until September 2013. At the beginning of October I set up my own private legal practice and consultancy working from home, Hamilton Consultancy.

My work in the Law Centre involved the provision of specialist legal advice to the general public, member organisations, legal professionals and other statutory, non-statutory and NGO groups. The work involved providing specialist training, detailed policy responses to a range of legal and policy issues, publication of written commentary and articles on a range of relevant issues and representation and advocacy on behalf of clients in the Northern Ireland (NI) Court system.

In October 2008 I was invited to represent the UK at a specialist international conference on compensation for victims of human trafficking in Washington D.C. as at that time I was only one of very few lawyers in NI who worked with victims. Since then I have continued to specialise in all work relating to human trafficking and have represented victims across the range of types of exploitation. In addition I have regularly spoken at conferences and events on the subject, provided detailed submissions on guidance in the area, including the recent Public Prosecution Service Guidance to Prosecutors in Human Trafficking cases. In addition I have provided specialist training across NI on the subject. I am considered to be a specialist in the field and continue to be consulted in all aspects of this horrendous crime including ongoing campaigning and lobbying for a cross-agency consistent approach to ensure that our criminal justice and immigration systems are victim centred. I continue

to work closely with the Police Service of Northern Ireland to develop more effective responses in the identification, referral and investigation of these cases.

In 2010 I was approached to contribute and co-author a chapter on human trafficking in the NI devolved administration for a new UK wide **Human Trafficking Handbook** published by LexisNexis in 2011 and co-written by a range of UK specialists in the field.

In October 2011 I was awarded the **Marsh Award** by the Human Trafficking Foundation & Marsh Christian Trust for Outstanding Contribution to the fight against human trafficking which was presented to me in the House of Lords.

The Anti-Trafficking Monitoring Group (ATMG) was established in 2009 to coincide with the Council of Europe's Convention on Action against Trafficking in Human Beings entry into force in the UK. The ATMG is a coalition of nine UK-based organisations working to monitor the UK's compliance with the Convention, particularly with regard to protecting the human rights of trafficked persons. I actively contributed to the first two reports published in 2010 & 2011 respectively, **Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons & All Change: Preventing Trafficking in the UK**. Following publication of both these reports I was actively involved, along with Amnesty NI, in lobbying the Department of Justice in relation to the recommendations contained in the reports. In 2012 ATMG requested that I conduct the research on its behalf in NI with all key stakeholders, NGOs and relevant others into prosecutions in human trafficking cases in this jurisdiction. The third report by ATMG **In the Dock: Examining the UK's Criminal Justice Response to Trafficking** was published and launched at the Inner Temple, London in June 2013.

The Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

Introductory Comments:

This private member's Bill introduced by Lord Morrow in June 2013 has to a degree obtained an important objective in raising awareness of these crimes and opening up important discussions in respect of the NI criminal justice response to human trafficking and the protection measures in place for victims that are identified here including those for children. For that reason alone it is to be welcomed however the Bill as it stands is not sufficiently comprehensive and requires significant amendment to achieve its policy objective as set out in the Explanatory and Financial Memorandum. More importantly the controversial new offence set out in Clause 6 of Part 1 should be deleted in its entirety for the reasons I set out below.

However is the Bill the right approach to be adopted in NI at all?

It should be acknowledged that the Department of Justice has implemented significant and positive change in NI in this area and has continued to commit to keep human trafficking as a priority on the Organised Crime Strategy for 2012-2014. The second report of the Inter-Departmental Ministerial Group on Human Trafficking published in October 2013 gives an indication of the NI position in relation to its response when compared to the rest of the UK and it seems that there is clearly a

need for much more work to be done in order to properly address the lack of referrals of victims here along with an incredibly low prosecution and conviction rate for specific human trafficking offences in NI. The most worrying aspect is the **63% decrease** in referrals to the National Referral Mechanism (NRM) from NI despite an overall increase of 31% in England, 48% in Wales but only 3% in Scotland. This is set against indications that there is an upward trend in the referral of victims of human trafficking in the UK and this seems set to continue throughout 2013 with the threat of this crime remaining high. This is unacceptable and must be addressed as a matter of urgency to determine why victims are not being identified and referred to the NRM in NI.

The NI criminal justice response may require the implementation of new provisions such those proposed in Lord Morrow's Bill but what seems to be an obvious question and of serious concern is why there remains a continuing inconsistent "overall" approach being adopted throughout the UK in addressing the threat of human trafficking. This needs proper consideration by the UK Government if the threat of human trafficking is to be adequately responded to given it is widely accepted that the approach to tackling human trafficking needs to be robust, consistent and co-ordinated.

Human trafficking cannot be solely addressed as simply a criminal justice issue as it overlaps with key issues in immigration along with other areas of social justice including health, education and employment. The fact that Scotland and NI are devolved administrations results in an ad hoc overall UK wide response where the identification, referral and protection of victims, the conviction and prosecution of traffickers, measure to tackle demand, education and awareness programmes and the provision of support to victims appear to vary widely within the UK? Surely the response to human trafficking should be a UK wide one and any criminal justice response should be reflected equally in each area of the UK? The fact that NI, Scotland and England & Wales all have differing proposals currently underway will surely only lead to further confusion?

For example, trafficking specific measures in the Protection of Freedoms Act 2012 came into force on 6 April 2013 enabling the prosecution of trafficking offences committed abroad to be prosecuted in England & Wales with different but equivalent legislation being adopted and implemented in Scotland and NI. The UK Government has recently announced that it is proposing a Modern Slavery Bill to consolidate existing offences on human trafficking and make law enforcement options administratively simpler and operationally clearer, including provision for Trafficking Prevention Orders, in England and Wales. In Scotland Jenny Marra, MSP, has this week published a consultation in connection with a draft proposed Human Trafficking (Scotland) Bill? Surely further variations in the applicable legislation in different parts of the UK as it relates to human trafficking and related offences does not appear to be the simplest solution?

The intrinsic links to immigration law also pose difficulties in that the NI administration cannot legislate on these specific areas despite their impact on cases involving victims who have immigration status issues. These issues tend to cause significant concerns for victims in addition to concerns around criminal justice and therefore to adopt a holistic approach to addressing human trafficking I would submit that any Bill should incorporate all other relevant areas of law including other related offences that cannot be determined by the NI Assembly but are Westminster driven. This should also include the potentially wide ranging and applicable civil matters especially around breaches in the employment law field as they relate to human trafficking. What is required is an all

encompassing human trafficking Bill that applies consistently and in a uniform manner throughout the UK to ensure that victims are treated equally no matter where they are identified.

It is also of note that healthcare is a devolved issue. It is submitted that we should be applying the provisions of Article 12 of the European Convention in relation to the provision of specialist counselling and assistance for victims of human trafficking identified here. The explanatory report at para 150 states ;

"The aim of the assistance provided for in sub-paragraphs a. to f. is to "assist victims in their physical, psychological and social recovery". The authorities must therefore make arrangements for those assistance measures while bearing in mind the specific nature of that aim."

I would suggest, based on my specific experience in the representation of victims in NI , that there is a significant absence of appropriate and specialist support for victims here. Absence of rehabilitation is also a breach of article 14 of the UN Convention Against Torture, Inhuman and Degrading Treatment. It is unclear from the Bill what practical measures will be put in place despite the inclusion of Clause 10(1)(b)(v) (See the Helen Bamber Foundation report (published by the OSCE)<http://www.osce.org/cthb/103085>)

Specific Comment on the Contents of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

Due to personal time constraints I only intend to make submissions on one specific provision within the Bill as this is the most controversial and unnecessary. The majority of the other clauses are to be welcomed and to a degree provide an opportunity to at least place the policy issues around human trafficking and the National Referral Mechanism on a domestic legislative basis. In particular the provisions around the provision of a guardian for child victims are to be welcomed and considered necessary although this is stated in light of what is set out above.

Clause 6: Paying for sexual services of a person

This clause distracts from the purpose of the Bill and should be deleted. Prostitution and human trafficking whilst related in some very specific instances are two very distinct issues and while it is accepted that some victims are found in prostitution it is not to say that all those involved in prostitution are exploited. In fact it is not at all clear what evidential basis this clause is based upon. Much has been made of the so called successful models in Sweden and/or Norway but NI is a distinct and separate jurisdiction with its own specific history, influencing factors and pressures. The criminalisation of prostitution in Sweden has not resulted in a reduction of human trafficking and recent cases have highlighted this.

To date very little, if any, detailed data is available around what actually occurs in NI in the provision of prostitution services. There has been little or no detailed research into this area and therefore it is submitted that to legislate in such generalised terms is quite frankly to put the "cart before the horse" so to speak! There is a very real risk that the inclusion of this clause could actually force victims further underground and create an impossible environment for anyone involved in the provision or purchase of sex who observes that there maybe a situation of exploitation coming forward or approaching the authorities for assistance. To suggest that criminalising prostitution will

reduce human trafficking or that all prostitutes are exploited is simply not backed up by any accurate evidence or accurate data in NI.

More concerning is that it also appears that at no stage have those involved in sex work in NI been asked for their input in relation to this or in fact how this would impact on them or their lives or on family members. The Bill provides no suggestions or opportunities around exit policies or provisions for those who are currently involved in sex work but who want to leave. On the face of it the clause further stigmatises those involved in sex work and is likely to result in further marginalisation of those working in the sex industry.

Further the clause does not address at all the issue of demand. The suggestion that the creation of an offence for buying sex will reduce demand for trafficking is not supported by any evidence nor does it make sense. To create an offence does not negate or reduce demand and whilst it may deter some users for fear of prosecution it is likely that most will simply seek services elsewhere or the market will go further underground placing those involved at potential further risk of significant harm.

The clause simply results in a diversion from the key issues. In addition it is to be expected in the current economic climate that extra resources will not be made available to the PPS or PSNI and therefore it is likely that manpower and resources would actually be diverted away from the identification, referral, investigation and prosecution of human trafficking offences towards offences committed under this provision. This is a clear contradiction of purpose.

It is understood that the DOJ has now announced new research into prostitution in NI and therefore surely it would be prudent and sensible to await the findings on this before introducing or considering such important and significant legislation. We need a comprehensive set of accurate factual information and in depth impact assessment including the human rights impact on victims and others as it relates specifically to this jurisdiction before consideration of the introduction of such a significant change in our criminal legislation relating to the provision of sexual services.

Prostitutes are not per se victims of trafficking and the issues are distinct and different. Neither the EU Directive or the Protocol on trafficking require States to abolish all forms of prostitution but only child prostitution and prostitution that involves the use of persons subjected to force, threat, coercion and deception etc. In other words those individuals who are sexually exploited and not there as a matter of choice. To seek to regulate and legislate for offences to be committed simply by the purchase of sex goes too far and is a completely separate issue to that of human trafficking. Article 64A (Paying for sexual services of a prostitute subjected to force etc..) already exists and the proposal by the DOJ to extend the strict liability 6 month timeframe around this offence is to be welcomed given that has prevented successful prosecution under this offence to date.

It has been suggested by supporters of this clause that too much focus has been placed on this clause and I would concur with this but note that is exactly why it should be deleted. If it is not central to helping the plight of victims of human trafficking then why is it included at all.

Please note that I am more than happy to be considered to give oral evidence to the committee on the content of my submission but also in relation to any other content of the entire Bill if necessary or requested.