

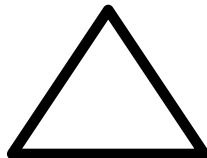
Comments by the Evangelical Alliance Northern Ireland on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

Introduction

We appreciate the opportunity to respond to the Justice Committee at this stage. We thank our political representatives across the parties for their efforts to raise awareness of human trafficking and for the real progress in legislation and engagement in this area. Northern Ireland is leading the UK in terms of practical human trafficking policy development and we believe that this bill is an important contribution to this process.

It is to be commended that this bill aims to provide comprehensive services for victims of human trafficking and exploitation and to reduce demand for sex-trafficking.

At a very basic level, every type of people-trafficking involves three groups – traffickers, victims and users.



An effective response must deal with all three aspects of the trafficking triangle. We welcome the fact that this bill aims to strengthen legislation in respect of all three areas.

Victims must be rescued and offered appropriate care and rehabilitation. This bill puts forward important provisions in this regard which we welcome, particularly around the proposal for child trafficking guardians.

Traffickers must be pursued and brought to justice. The recent provision in the Criminal Justice Bill 2013 for all trafficking offences to be made indictable-only sends out a clear message about the severity of this crime. We welcome the aim of clause 4 to provide a further disincentive against traffickers.

However, what is often overlooked is the user, those who drive the demand for cheap goods, cheap labour or sexual services. We believe that this is the important area where we can begin to change culture and where more focus is required. We welcome the visionary aim of this bill to tackle sexual exploitation and the demand for sex trafficking head on.

Summary of Response

- We welcome and commend the important work carried out by our public representatives to date on human trafficking and exploitation.
- We welcome the genuine aims of this bill and commend the awareness of human trafficking and exploitation which the bill has raised. We welcome the public discussions about prostitution and the challenge this bill presents to the commoditisation of people.
- Clause 3 - We ask whether the legitimate aim of this clause might be best served within judicial guidelines.
- Clause 4 - Further clarity is required as to what are 'exceptional circumstances'.
- Clause 6 - We support the basic premise to reduce the demand for sex trafficking and to send out a message that people should not be bought for sexual services. In respect of clause 6 we have a number of suggested amendments to, or alternatives to, clause 6. Any change in this legislation needs to be followed up by a wide-ranging public awareness campaign, similar to the successful drink driving campaign that we have had here in Northern Ireland.
- Clause 8 – We feel this requires further consideration. Each crime committed by a victim of human trafficking should be considered in its own merit regarding the severity of the crime.
- Clause 10 – We very much welcome, particularly if clause 6 passes. It would be important to have practical support services in place to help those women who have been prostituted or engaged in prostitution and wish to exit the industry.
- Clause 11 – We question whether it is required. The procedures for criminal and civil compensation are already clear. Perhaps training is need for those who work with victims to help them point victims to the appropriate systems for compensation.
- Clause 12 - We welcome guardians for victims of child trafficking. We would propose that a similar concept is extended to all victims of trafficking.
- Clause 13 – How we treat victims of human trafficking is vital. We support measures to protect victims from re-traumatisation. We suggest this could be extended to other victims of abuse and exploitation.
- Clause 15 – We support the idea of publishing a regular strategy on human trafficking and exploitation.
- We welcome the focus this bill has created on the inherent worth of the human being. We encourage this opportunity to raise awareness of other instances of exploitation (e.g. domestic violence, child abuse and grooming, bullying etc.) under the same framework of the dignity of the human person and the value of healthy relationships.

Part 1

Clause 3 aggravating factors

We do not disagree with the list of aggravating factors and welcome efforts to ensure that those convicted of serious trafficking offences receive serious sentences. Our question is whether these aggravating factors should have a statutory basis or take the form of judicial guidelines? There is a danger of Clause 3 making judicial independence and separation of powers real or perceived issues. Sentencing is a matter for the judiciary and they have discretion to decide on and apply aggravating or indeed mitigating factors to their sentences. There is already an appeals mechanism for unduly lenient sentences in place for offences including trafficking. Perhaps it is better to leave the application of aggravating factors to the Judicial Studies Board Northern Ireland rather than direct intervention by legislators in this specific instance.

Clause 4 Minimum sentence for human trafficking and slavery offences

We welcome the aim behind clause 4 of the bill, which calls for a minimum sentence for human trafficking and slavery offences as a deterrent to traffickers. A minimum sentencing provision exists in Sweden's trafficking legislation and we suggested consideration of such a clause in our previous response to Lord Morrow's original consultation.

However in referring to section 2 of the clause, we would suggest the need for further clarity around the wording '*exceptional circumstances relating to the offence or the offender*'. We suggest that these exceptional circumstances include:

- The offender is under 18
- The offender was coerced themselves
- The offender was a vulnerable adult

We acknowledge the comments which we made about clause 3 and judicial independence and separation of powers. We acknowledge that this clause too could be viewed as an interference with the separation of powers. If the words 'exceptional circumstances' are sufficiently defined so as to allow judicial discretion then we are satisfied that a balance could be struck between the legislator and judiciary with regard to these offences.

More generally, if the words 'minimum sentence' are causing difficulty perhaps this clause should be worded in terms of a mandatory sentence. This is accepted language and accepted practice in the Northern Ireland criminal justice system. There are a number of precedents or examples of offences where there are mandatory sentences which in some circumstances are effectively minimum sentences. For example, if someone is convicted of causing death by dangerous driving there is a mandatory sentence of at least 2 years in prison. If someone is convicted of drink driving or dangerous driving the court has no discretion, with respect to banning the person from driving for a period. There are other scheduled offences where there is a mandatory way in which that person must be dealt with, e.g. certain sexual offences and the requirement to be placed on the sex-offenders register.

We support the overarching aim of this clause, namely; if someone is convicted of a trafficking or slavery offence, i.e. of taking away the freedom of another human being, the very least they should risk is their own freedom. This is an important

opportunity to show through legislation the value our society places on freedom and human dignity.

Clause 6 Paying for sexual services of a person

This clause has gained notoriety as the most controversial of the bill. We welcome the aim of this clause in the comprehensive context of the bill. We welcome this bold attempt to reduce the demand for paid sexual services which in turn fuels sex trafficking.

Like Lord Morrow, we are of the opinion that the existing offence, Article 64A of the Sexual Offences (Northern Ireland) Order 2008, is not an effective deterrent. At the moment those found guilty of using a prostitute subjected to force can be fined a maximum of £1000. This is a strict liability summary offence. There have been no convictions to date.

We are aware that the Department of Justice is currently considering extending the time limit for prosecution of this offence to three years. While we welcome this extension in time limit, there is no change proposed to the penalty. We believe the penalty of £1000 fine is inappropriate and remains an insufficient deterrent to men who are willing to purchase trafficked sex.

Our campaign

At this point we should declare that we have been running a campaign around this particular issue of reducing the demand for sex trafficking.

We believe that the current maximum penalty of a £1000 fine is disproportionately lenient given the gravity of the crime and human rights abuses concerned. So in April 2012 Evangelical Alliance Northern Ireland launched a campaign, which gained over 1100 signatures, calling on the Northern Ireland Assembly to change the law so that anyone convicted of using a trafficked person faces at least the possibility of prison and being put on the sex offenders register. Our aim was to use the possibility of a serious criminal conviction as a deterrent - a serious penalty for a serious crime.

Practically, this would involve turning the existing offence into a hybrid offence which extends the time limit and penalties involved. This gives greater flexibility and discretion as to how the offence is best prosecuted. An indictable offence would also need to be added to the schedule of offences which attract a period on the sex offenders register or we would encourage judicial consideration of a SOPO, a sexual offenders prevention order.

The aim of the sexual offenders register or indeed a SOPO is to protect the public, or any particular members of the public, from serious sexual harm from the Defendant. Some may argue that it would be an abuse of such instruments to use them in these cases of men who have purchased sexual services from a prostitute subject to force. There are clearly differences between rape and the crime of paying for the sexual services of a prostitute subjected to force (e.g. the strict liability nature of the offence, payment and the perceived consent involved at times). However, it can be argued that someone convicted of using the services of someone *forced* to have sex with them is a danger to particular members of the public who are selling sexual services and who are already particularly vulnerable to exploitation. These men are the willing participants in a crime of forced sex. Crimes such as exposure and voyeurism are scheduled offences which can attract a period on the sex offenders register. The crime of paying for forced sex is as serious, if not more so, than these offences.

We do not deny that this could potentially be a very serious conviction. We would refer to the offence of sexual relations with a minor as found in the Sexual Offences Order 2008 Articles 12-15. Whether the child consented or not to the act is irrelevant. A child under 13 does not, under any circumstances, have the legal capacity to consent to any form of sexual activity. The maximum penalty for rape or sexual penetration of a child under 13 is life imprisonment. For sexual assault the maximum penalty is 14 years. The key issue is the inability to consent. Lack of consent is also critical in the case of paying for sex with a prostitute subjected to force. A trafficked woman has not consented and is therefore the victim of rape. The penalty should be comparable to that for rape, whereas the current legislation compares it to riding the train without a ticket (£1000 fine).

Our campaign occupies the same territory as Lord Morrow's bill in tackling the demand for sexual services. Our campaign focuses on retaining the strict liability nature of the existing offence and in targeting those who paid for the sexual services of someone subjected to force. Lord Morrow's clause 6 aims to simplify the matter and to criminalise payment for any sexual services. We welcome the clear and bold statement that clause 6 makes in saying to society that it is not acceptable to commoditise people by buying sex.

In light of our campaign and Lord Morrow's proposals we have suggested several possibilities for clause 6 and the law around paying for sexual services. The first two options involve amendments to the existing Article 64A. The third suggests amendments we would make to clause 6 as proposed by Lord Morrow. The final proposes a third way, a two tier offence which could help differentiate between prostitution and sex trafficking:-

- Simply amending Article 64A into a hybrid offence. The hybrid nature could give greater flexibility as to prosecution in terms of timescale and penalty.
- Amending Article 64A into a scheduled hybrid offence. Add the indictable offence to the schedule of offences capable of attracting a spell on the sex offenders register. We would argue that one of the penalties faced under indictment should be prison and would encourage consideration of a SOPO or use of the sex offenders register as a serious deterrent to purchasing forced sex.
- In terms of clause 6 as proposed we welcome it as a hybrid offence. We would encourage the timescale for prosecution to be extended to three years if tried summarily. This would avoid the situation where time runs out before a prosecution can be brought. We would also call for the consideration of more serious penalties.
- There has been some criticism that clause 6 conflates the issues of prostitution and trafficking. This could be countered by differentiating between the offence of paying for sexual services and paying for sexual services of someone subjected to force. This would take the form of a two-tier offence where the act of purchasing sex is illegal in both instances but if force is proved then the penalty becomes much more serious.

Clause 6 (5) states that the Department must raise awareness of this offence within the first year of it coming into effect. We certainly welcome this proposal. Without such awareness, the change in legislation alone is less likely to effect change in public attitudes and wider culture. The drink-driving and road safety adverts are great local examples of how an advertisement campaign can effectively compliment legislation in changing culture and social attitudes.

Efforts have been made to prevent human trafficking in Sweden through awareness raising campaigns to reduce the demand for sexual services, as shown in figure 1. During 2008, the local government in Stockholm conducted an awareness raising campaign targeted at taxi drivers and hotel and restaurant personnel who are likely to come into contact with victims of trafficking. Posters and television advertisements provided information on how the public can report suspected instances of trafficking.



Figure 1. Human trafficking campaign used in Sweden targeted at the purchasers of sex.

New York has also launched the “Let’s Call an End to Human Trafficking” campaign, aimed at raising awareness and encouraging New Yorkers to report potential trafficking situations. The campaign, which encourages New Yorkers to “See it, Know it, Report it,” features public service announcements in print and video. The campaign featured bus shelter advertisements and an anti-trafficking website to provide more information on the plight of human trafficking.

Building on the *blue blindfold* campaign, we could use the example of other countries to create an information campaign targeting the public at large and the purchasers or potential purchasers of sexual services. The goal is to stop men buying sex by changing their attitudes, by enabling them to see the worth of women and the dangers of the commoditisation of sex. The campaign should be highlighted on TV, social media, billboards, public toilets in bars and restaurants etc. It would also be useful to educate boys in the later years at school and young men through sports networks like the GAA, IRFU and IFA.

Clause 7 Requirements and resources for investigation or prosecution

Again we welcome the intentions behind this clause. There may be no issue whatsoever, however, we would cautiously raise the need for operational and budgetary independence for the PSNI, PPS and other agencies. We would also raise the danger of the precedent of prioritising resources for one particular issue in statute.

Clause 8 Non prosecution of victims of trafficking in human beings

Again we recognise the intention behind this clause, that a victim of human trafficking should not be unfairly penalised for criminal acts which they were forced to do.

However we have concerns about establishing a statutory basis for the non-prosecution of a group of people.

Although clause 9 defines the meaning of 'victim' for parts 2 and 3 of the bill, the term victim is not defined in Part 1 of the Bill. This creates an issue of defining the group of people to whom this non-prosecution is extended. Does it apply to suspected victims, to those who self-identify as victims, to those who co-operate with criminal investigations, to those who are successful in the NRM process or to all of these?

Crimes are often committed for a number of reasons which can be hard to separate. Clause 8 states that the criminal act must be 'as a direct consequence of the trafficking in human beings'. This could be difficult to prove in many instances. For example take someone who was trafficked into Northern Ireland 2 years ago and has since escaped from exploitation. However, they struggle to rehabilitate and often commit petty crimes while intoxicated, attributing this behaviour to their trauma. Will they be prosecuted? Will there be a time bar between trafficking and offences committed or does the offence only apply to offences committed while they were being trafficked?

We are also concerned that this immunity may create a hierarchy of victims whereby the non-prosecution of victims of human trafficking who commit crimes could diminish the justice, needs and views of their victims.

There are victims who may have risen to a position of power becoming a trafficker themselves. In these cases, victims may have committed a very serious offence such as trafficking, murder or rape. The intention of this clause is certainly not to provide an excuse for serious organised criminals despite their real or bogus claims of being trafficked themselves. It will be difficult in these very complex cases to decide which offences were committed because of coercion and the 'direct consequence of human trafficking' and those committed through free will and choice. The line between coercion and an individual's own responsibility needs to be drawn more clearly. Such cases should be considered on their own merits and having regard to the seriousness of the crime committed.

There could be a conflict of legal interpretation under the bill as it stands. If a trafficked person who has been coerced into becoming a trafficker themselves is convicted of a trafficking offence how are they to be treated? Under clause 4 they may be subject to a minimum sentence however under clause 8 they could actually argue that they should not have even been prosecuted at all.

We also have concerns as to how this clause would fit alongside the independent role of the PPS. In every case the PPS has discretion whether to prosecute or not built into the public interest element of the test for prosecution. There is a real danger that this clause could, or be seen to, interfere with the independence of the PPS.

Again we want to reiterate the fact that we welcome the intentions of this clause; to protect vulnerable people from prosecution for crimes which they would not have committed but for being trafficked. However, as it stands, we fear the clause could be abused by traffickers themselves. It may be better to highlight the broad aim of this clause to the PSNI, the PPS and the Judicial Studies Board Northern Ireland, leaving the decision to charge, prosecute or impose penalties to each of these organisations.

Part 2

Clause 10 Requirements for Assistance and Support

Some victims of trafficking and exploitation are freed in a police operation or by sudden events. However, we recognise that for many exiting a situation of trafficking or exploitation is far from a one-off process, but rather typified by stops and starts. Victims of human trafficking are often enslaved by physical or psychological dependence on the traffickers or users. This will compete with the practical difficulties to be faced on exiting, and the uncertain benefits of doing so without guarantees of formal and informal support.

Consequently, there is a need for a well-funded programme to support victims who want to break away from these dreadful circumstances in which they find themselves. Cooperation is required across Government departments in order to develop targeted "exit strategies" which includes health support, counselling, education, income support and retraining. We need to ensure that victims have the freedom to leave exploitative situations.

We would like to see this assistance and support extended to prostituted people and those exploited in providing sexual services. This is especially important if clause 6 comes into effect if we are to deal with the issue in a victim centred and holistic way. In Sweden, after the purchase of sexual services was criminalised, sixty percent of prostitutes took advantage of the well-funded programmes and succeeded in exiting prostitution. In addition to providing the incentive "for women wanting to escape prostitution to seek the assistance they need", Swedish NGOs reported that prostituted women and girls "contact them in greater numbers to get assistance to leave prostitution".

Such measures also act as a preventative for a future generation of marginalised individuals who could be vulnerable to entering the industry.

Clause 11

We would simply raise the question as to whether this clause is needed. Compensation Services, a branch within the Department of Justice has already set out procedures on how to apply for criminal injuries compensation. The procedures for compensation within civil law are quite different and are already provided for within the High Court and County Court rules. Perhaps instead of legislation, those working with victims would be best placed to point them towards the existing statutory frameworks within which to seek compensation for criminal injuries or loss within the civil law.

Clause 12

We welcome this provision for guardians for child victims of child trafficking and the role that they would provide in being a stable and safe influence.

We would suggest that this concept of guardians be offered to all victims of trafficking. The numbers of victims recorded are perhaps small enough that this would not be a large additional cost. The services already provided by Migrant Help, Woman's Aid and social services are excellent. However we feel there would be an added benefit to the victim in having a guardian assigned to them; one person they consistently deal with to steer them through the complicated legal, healthcare, immigration procedures they face. An adult 'guardian' may have different legal functions and a different name to avoid legal confusion. However the main roles as

described in 12 (2) a-k could easily be applied to the circumstances of any victim, child or adult.

Our reasoning for this suggestion is that those identified as victims are often in an extremely vulnerable position; perhaps far from home, without the English language, traumatised, confused etc. In the cases of children, a guardian would be appointed automatically. In the case of adults, could the services of a 'guardian' at least be offered? Again the value we see to the victim is in providing stability, helping them to co-ordinate the best care and to consistently join the dots.

Part 3

Clause 13 Protection of victims in criminal investigations

Again we warmly welcome the intention behind these clauses to prevent secondary victimisation and re-traumatisation. In relation to clause 13 we would simply raise the question as to whether primary legislation is the best format in which to set out these measures. Are there already robust procedures and guidelines in place within the PSNI and Police Ombudsman to deal with these concerns? Could this clause be extended beyond trafficking into investigations concerning other forms of exploitation? For example, domestic violence, abuse and intimidation.

Part 4

Clause 15 Prevention

We welcome the regular requirement to produce a strategy which will be made available to the public. Whether the strategy document is published every one, two or three years, the important thing is that there is flexibility to respond to changing trends in trafficking. It is essential that the strategy ties into up to date figures to give us the best picture possible of the number of victims, traffickers and users involved so that resources can be diverted effectively. Figures on the numbers of people reached through awareness-raising efforts are also important to shape the effectiveness of future strategies.

Again we would suggest that a strategy to raise awareness around human exploitation is not strictly limited to trafficking and slavery. These are grave abuses of freedom, human rights and the dignity of the person. However, we would suggest that raising awareness of these issues presents an even greater opportunity when engaging with the public or training frontline workers.

We propose that any training and awareness-raising begins with a framework around the dignity of the human person and why these issues matter. This consistent context and framework could help to change our culture into one where any exploitation of another person becomes much more difficult and unacceptable. From this point, very brief awareness and training can be given on recognising signs around a whole range of other issues such as domestic violence, abuse, bullying etc. (Recent figures on domestic violence show that 1 in 5 women in Northern Ireland have been affected and that the PSNI receive approximately 3 calls per hour on this issue).

The Evangelical Alliance, formed in 1846, is the largest body serving the two million evangelical Christians in the UK. We have a membership of denominations, churches, organisations and individuals. In the UK we work across 79 denominations, 3,300 churches, 750 organisations and thousands of individual members.

We are a founding member of the World Evangelical Alliance, a global network of more than 600 million evangelical Christians.

Our Northern Ireland office was established in 1987 and for the last 25 years we have been contributing to public life here.

Our mission is to unite evangelicals to present Christ credibly as good news for spiritual and social transformation.

Our 2 main objectives are bringing Christians together - Unity, and helping them listen to, and be heard by, the government, media and society - Advocacy.

We seek to benefit all of society by speaking biblical truth boldly with love.

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