

Briefing on Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

30 October 2013

Introduction

This paper is not intended to provide a comprehensive response to the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill but instead draws attention to key aspects of the Bill which may impact on the rights and best interests of children and young people and which are of concern to the Commissioner.

NICCY notes the need to ensure there is a collective and unified approach across the Northern Ireland Executive and the Assembly in order to effectively address trafficking, exploitation and abuse which threaten the most fundamental of human rights to life and protection. It is particularly important that a cohesive response to these concerns is developed when significant issues affecting exploitation and abuse in Northern Ireland are considered, including the porous land border with the Republic of Ireland and the growing understanding of the internal trafficking of children for the purpose of sexual exploitation.

It should also be acknowledged that trafficking and exploitation must be understood as being concerned with a wide range of abuses across sexual exploitation, labour exploitation, domestic servitude, slavery and other forms of abuse and are not confined to offences within one of these areas. Further to this, there should be clarity concerning both definitions and understandings of trafficking and exploitation and recognition that while they may be closely interrelated they are not always interdependent.

General principles

- The principle of developing unified legislation on trafficking and exploitation is welcomed and the need for the UK to address the consequences of having in place a range of relevant legislation was noted by the Council of Europe's Group of Experts on Action Against Trafficking (GRETA) in their report on UK compliance with the Council of Europe Convention.¹

¹ GRETA (2012) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom

- It is important that the Bill has clearly defined children as being under 18, which is not currently the case with all existing relevant legislation. Consideration should be given to providing particular protections for young people up to the age of 21 years where they are care experienced or have a disability.
- All forms of trafficking and exploitation against children and young people under 18 should be considered an offence, including paying for sexual services.

Guardians for potential child victims

- It is of particular significance that the Bill includes the provision of a legal guardian for potential child victims to represent their best interests. However as required by international child rights standards² and advocated by the four UK Children's Commissioners³, government should ensure that all separated children subject to immigration control (SCSIC), of which separated children subject to trafficking will be one sub-group, have access to a guardian.⁴
- The recent evaluation of the Scottish Guardianship Service for SCSIC highlighted that that the process of disclosure for victims may be lengthy and complex and noted cases where victims of trafficking had been identified by guardians rather than statutory agencies involved with the child.⁵
- It is important to clarify the need for this specific provision for separated children who are subject to complex interactions between immigration, welfare, trafficking and other processes and Northern Ireland child victims.

Investigation and prosecution

- It is welcome that the investigation and prosecution of trafficking will not be dependent on securing a victim complaint or report.
- It is welcome that special measures for victims will be ensured and it should be noted that a child protection approach must be the basis of responses to all cases of trafficking and exploitation where children are involved, including where young people may be subject to age assessment processes.
- In relation to the non prosecution of victims it is important that child victims are not

² UN Committee on the Rights of the Child (2005) General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin

³ UK Children's Commissioners (2011) Midterm report to the UK State Party on the UN Convention of the Rights of the Child; (2008) Report to the UN Committee on the Rights of the Child

⁴ NICCY will be publishing commissioned research on guardianship for separated children subject to immigration control in 2014.

⁵ Crawley H. and Kohli R. (2013) She Endures With Me: An Evaluation of the Scottish Guardianship Pilot

prosecuted and/or detained in justice facilities following involvement in criminal or immigration offences due to having been subject to trafficking or exploitation. However, in complex cases the principle of unconditional immunity may offer protection to individuals who (although they have been subject to trafficking or exploitation) go on to commit serious crimes of violence and abuse, including against children.

- In relation to minimum sentencing it is not convention for this to be set out in primary legislation and it should be noted that recent guidance highlights that aggravating and mitigating factors should be considered in the particular circumstances of each case.⁶ Minimum sentencing should not, in principle, be applied to children and young people.

Other comments

- It is important to ensure that clauses which list, for example, forms of irrelevant consent and aggravating factors, do not in practice have the unintended consequence of restricting the factors that will be considered in the investigation and prosecution of cases. In relation to consent, the preamble to the EU Directive is unambiguous in its statement that in regard to children consent should never be considered valid.⁷ In relation to aggravating factors, action taken in cases involving child victims should always reflect this in prosecutorial and sentencing decisions.
- It may be helpful to consider where clauses would be more appropriately dealt with in secondary legislation or statutory guidance which can also be amended with greater ease to reflect changes in understanding and evidence in relation to trafficking and exploitation.
- The provisions of the Bill should apply equally to all forms of trafficking and exploitation and not have the unintended consequence of creating a differential or hierarchical framework of exploitation and abuse.

Conclusion

As Northern Ireland seeks to ensure that a rigorous and robust response to trafficking and exploitation is embedded, a unified approach is required. At a time when a range of developments regarding trafficking are being considered (such as Lord Morrow's Bill, the Justice Minister's consideration of secondary legislation, the new Public Prosecution Service Policy for Prosecuting Cases of Human Trafficking and the development of a Modern Slavery Bill by the UK Government) this approach must be focused and cohesive.

⁶ PPS (2013) Policy for Prosecuting Cases of Human Trafficking

⁷ Directive 2011/36/EU Preventing and Combating Trafficking in Human Beings and Protecting its Victims

In relation to potential child victims, this response must at all times have children's rights and best interests at its core.