

To: Christine Darragh, Clerk to the Committee of Justice, Northern Ireland Assembly

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

PSNI SUBMISSION

BACKGROUND

Human Trafficking remains a priority for the PSNI and any measures introduced that would assist in identifying victims or prosecuting persons involved in committing any form of Human Trafficking offence are welcomed. Work has been on-going over the last number of years to train and guide Police Officers in Human Trafficking detections and also to assist in initiating prosecutions. The PSNI have also been involved in extensive awareness raising within the Northern Ireland communities and this will continue with the assistance of Statutory agencies both locally and nationally. The PSNI have had several successful prosecutions supported by the PPS and the PSNI are also leading European wide Joint Investigations Teams, which has led to the development of specialist expertise in Human Trafficking investigations and covert operations which are internationally recognised.

In response to your letter and request of 3rd October 2013, the Police Service of Northern Ireland have been invited to examine the content of the proposed bill and make comment for the consideration of the Justice Committee.

PART 1

OFFENCES

1. Definition of human trafficking and slavery offences

The suggested definitions are accurate and provide valuable clarity in the area of human trafficking offences.

2. Consent irrelevant for victim of human trafficking or slavery offences

The circumstances surrounding 'facilitation' of travel vis a vis trafficking can overlap and be difficult to separate. An individual who has been the subject of illegal entry to the United Kingdom, may then on arrival be subject to exploitation and therefore be categorised as a Potential Victim of Trafficking. Likewise a victim who is facilitated may not realise that they will be exploited on their expected arrival and early interventions by law enforcement may not be able to identify the expected exploitation. A key component of trafficking is the fraud/deception element which impacts on the issue of "true consent" of the victim, had they known the full circumstances and intentions of the trafficker.

3. Aggravating factors

The issue of sentencing is a complex matter. Sentencing guidelines set out the general principals which relate to aggravating and mitigating factors. In the recent successful conviction for human trafficking in Northern Ireland, R v Pis, the Lord Chief Justice issued additional guidance outlining the aggravating factors in relation to sexual exploitation. This guidance was used in the sentencing during R v Pis and the more recent R v Chen and Others. The role of the Trial Judge is to consider all facts relevant to the matter at hand and sentence utilising guidance accordingly. A number of these factors may make the trafficking offence more serious and have a greater impact on the victim. However, a Trial Judge would be conscious of such factors and can sentence accordingly within current guidelines.

Trafficking by its very nature is an infringement of one's individual human rights. The factors which can impact on the gravity of the crime are numerous however will vary in each individual circumstance. Therefore, caution should be exercised when trying to categorise levels of gravity without understanding of surrounding factors and victim impact.

We do not believe that there is a requirement for additional legislation to define aggravating factors. The proposed legislation indicates that the Court "*must treat the following as aggravating factors*". It is suggested that this should remain at the discretion of the Court, and it may be more practicable to amend this to "*may treat the following as aggravating factors*".

4. Minimum sentence for human trafficking and slavery offences

As outlined in our response to clause three sentencing should be a matter for the Court and one which a Trial Judge can address within current guidelines. It is not believed that this is an area that should require legislative parameters.

5. Amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

The legislation surrounding forced labour is contained within the Asylum and Immigration Act 2004 and interpretation and enforcement of this legislation has proved difficult.

Concern exists around provision of evidence where "he believes that another person is likely to exploit" (Section 1b, 2b and 3b). The evidential test surrounding an individual's belief is difficult to prove without significant supporting evidence. It is suggested that an amendment to include "that he should have reasonable cause to suspect" or similar terminology would be appropriate and would improve the ability to enforce this legislation.

Whilst the amendments to include begging and other forms of labour are welcomed it is suggested that the entire legislation surrounding forced labour is examined.

6. Paying for sexual services of a person

The issue of prostitution and trafficking for the purposes of sexual exploitation are very closely aligned, however they remain two very separate issues. A trafficked victim has had their ability to choose, withdrawn from them either by force, coercion, deception, threat or many other possible factors and therefore cannot make an informed decision regarding their conduct. A prostitute is a person, either male or female who engages in sexual activity for the purposes of personal financial benefit. Whilst many factors, and indeed life circumstances can lead someone into prostitution, the fact remains, unpalatable as it may be that some choice does exist. Legislation is currently enacted around prostitution activity that occurs in a public place, around brothels and latterly around purchasing sex from a person subject of coercion, that seek to address the public nuisance factor and the exploitation of trafficked victims.

The proposal as outlined would make it a criminal offence for a person to make or promise payment for the sexual service of a prostitute and this would present a number of challenges. The term “sexual service” would need to be clearly defined and referenced, as it would be open to a wide range of interpretations and moral comment. A spectrum range could stem from “sex phone line”, voyeurism with no physical contact though to sexual intercourse.

The majority of prostitution within Northern Ireland is through independent prostitutes who are not trafficked or controlled by organised crime groups. Law Enforcement engagement with workers and groups involved in this area has resulted in information being supplied that has directly assisted in the identification of human trafficking offences. The proposal may potentially change the availability of prostitution within Northern Ireland, leading to it becoming more hidden and displaced to other parts of the United Kingdom

and Republic of Ireland. This would lead to a change in how this activity is made available to the public and the ability of Law Enforcement Agencies to actively identify and rescue victims of human trafficking. The current investigative methods utilise advertising and other internet material in order to investigate those individuals and organised crime gangs involved in trafficking and exploitation. There is a serious concern that displacement or movement into a hidden environment would seriously impede law enforcement capability. The proposal may also be difficult to enforce as Law Enforcement would require corroboration of a transaction between two parties involved. Alternative evidence gathering methods utilised by European Law Enforcement partners, who have criminalised this activity is not available to the PSNI.

The deterrent value of the legislation would be minimal, in that persons using prostitutes do so in a clandestine way. The legislation, as proposed around the purchase of sex, will present investigative difficulties and in reality would be difficult to police, given the requirement to prove who offered what for sale, and the specific details of the interaction between two or more persons. There is also concern that this would draw resources away from Human Trafficking investigations into a prostitution enforcement role.

Law enforcement activity to reduce demand for the product of organised crime has concentrated on public awareness rather than criminalisation. It is suggested that demand reduction is focused on awareness within the area of human trafficking.

Whilst there are many advocates of the Swedish Model in the criminalisation of the purchase of sexual services, there is conflicting information available. Recent PSNI experience and investigations in Sweden have highlighted concern that significant levels of trafficking and prostitution still exist despite the introduction of legislation to criminalise the purchase of sexual services. The prostitution environment in Sweden is not comparable to the situation existing in Northern Ireland, in that the majority of Prostitution is on-street or females involved in prostitution being transported to residences or addresses

by Controllers or associates. In Northern Ireland the vast majority of prostitution is conducted from private residences where the prostitute resides. Therefore to draw similarities would be incorrect.

Investigation and prosecution

7. Requirements and resources for investigation or prosecution

The responsibility for the investigation of Human Trafficking rests with a number of Law Enforcement Agencies within Northern Ireland. Each Agency has existing processes in place to ensure they can effectively investigate particular crime types and work in partnership across Northern Ireland in order to maximize their impact. In addition, training in this area has been developed, implemented and remains under constant review given the ever-changing criminal methodology. Within PSNI, proactive investigations into trafficking are conducted by Organised Crime Branch, who retain oversight on all PSNI Trafficking Investigations.

The PSNI has developed and introduced training packages in order to educate and assist officers in detecting and investigating human trafficking offences. It is not believed that there is a requirement for legislation to determine, *“persons, units or services be trained accordingly”* within PSNI. It is unclear as to what *“trained accordingly”* is defined as being.

Furthermore *“effective investigative tools”* is not clearly defined, however, tactics used during organised crime investigations, have already been utilised in human trafficking operations within N.I. There is no requirement for legislation to direct investigative tools available, as these are deployed in all crime types dependent on the seriousness of the offence under investigation. Human Trafficking is deemed to be a serious offence and all investigative tactics are available to investigators.

7 (2) PSNI support this clause.

7 (3) PSNI support this clause.

8. *Non prosecution of victims of trafficking in human beings*

The non-prosecution of victims of trafficking is already addressed within current guidelines and legislation. It would be unwise to introduce automatic immunity from prosecution and every case should be examined on an individual basis. This should always be subject to the PPS prosecutorial test in each case.

PART 2

ASSISTANCE AND SUPPORT

9. *Victim of trafficking in human beings*

No submission on this clause.

10. *Requirements for assistance and support.*

Legislation should not be required in this area as appropriate assistance and support networks are currently provided by DOJ and other partners. This has proved extremely successful in recent years and it is not assessed to be a legislative matter.

11. *Compensation for victims of trafficking.*

Legislation should not be required in this area as compensation procedures are available. Additional guidance to victims and all agencies involved would provide benefits and ensure that appropriate compensation is delivered to victims of human trafficking.

12. *Child trafficking guardian*

Any young person who is trafficked or suspected of being trafficked has a named, allocated social worker appointed with case management responsibility. Upon application by the Trust to the Court, to secure a legal order in respect of the child, a Guardian ad Litem will be appointed by the court. The Guardian ad Litem will subsequently appoint a legal representative to act on behalf of the child; each of these professionals may in circumstances act as a representative for the child. This is currently the case for all child victims of serious crime and legislation and processes exist to deal with this. There is no requirement for further legislation in this area.

PART 3

PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL INVESTIGATION AND PROCEEDINGS

13. *Protection of victims in criminal investigations.*

Whilst acknowledging a need, the rights of the victim need to be considered within the rights to a fair trial. Existing procedures for Special Measure applications exist and each case should be considered in isolation rather than a legislative blanket approach. Given the nature of trafficking, victims should be considered vulnerable and current procedures can continue to address this issue.

14. *Amendments to the Criminal Evidence (Northern Ireland) Order 1999*

No submission.

PART 4

PREVENTION AND REPORTING

15. Prevention

PSNI support this clause. The publication of a three to five year Northern Ireland strategy which complements the UK Strategy on raising awareness and prevention of human trafficking would assist in this area, and should be developed further within current existing structures. This could be adopted as best practice rather than a statutory footing.

16. Northern Ireland Rapporteur

PSNI do not support this clause. The existing oversight arrangements in N.I for PSNI and other parties in the justice sector should be sufficient.

CONCLUSION

Whilst the enactment of further legislation may assist in human trafficking investigations, many of the areas outlined are already being addressed successfully without the need for legislation.

The criminalisation of paying for the sexual services of a person is not supported at this time. It is suggested that further research is conducted into the prostitution environment in Northern Ireland and this may involve wide-ranging prostitution legislation. The support of persons involved in prostitution is also a concern and this legislation does not assist in such support.