



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill: Trafficking People for
Exploitation — CARE Briefing

11 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Mr Mark Baillie	CARE in Northern Ireland
Dr Dan Boucher	CARE in Northern Ireland

The Chairperson: I welcome Dr Boucher, who is director of parliamentary affairs, and Mark Baillie, who is the public affairs officer at Christian Action Research and Education (CARE) in Northern Ireland. You are very welcome to the meeting. As usual, this session will be recorded for the Hansard report and will be published in due course. I invite you to make your presentation to the Committee, and then we will have some questions.

Mr Mark Baillie (CARE in Northern Ireland): Thank you very much for your invitation to come before the Committee. It is a real privilege for us to present evidence on this very important issue. I am CARE in Northern Ireland's public affairs officer. This is Dr Dan Boucher, who is CARE UK's director of parliamentary affairs. Before we start, if there is any issue on which we do not have the information or there is any question that we cannot answer, we are quite happy to write to the Committee outlining more detail.

We are going to consider two issues today. The first is a technical issue about the differences in how England and Wales are seeking to comply with the EU anti-trafficking directive in comparison with Northern Ireland. The second issue is that, although we believe that clauses 5 and 6 of the Criminal Justice Bill are excellent legislative changes and we are very positive about them, in our opinion, they do not go far enough in seeking to fulfil the requirements of the directive. I will hand over to Dan to explore that further.

Dr Dan Boucher (CARE in Northern Ireland): Thank you very much indeed. Starting with the first, more technical, issue, we distributed a chart to aid explanation. I do not know whether members have

received it. Basically, there is obviously a significant virtue in considering doing things differently, but the benefit of doing exactly the same thing in different ways is less immediately obvious, especially when it leads to legal complexity. When considering vulnerable people who have been trafficked, it would seem good to us to try to keep things as simple as possible. The differences between the way in which Northern Ireland is proposing to make the changes to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the way in which England and Wales propose to make those changes basically mean that there will be greater legal complexity within the UK, but without any really substantive, significant difference. We are just bringing that to the Committee's attention for the very simple reason that we think it is a question worth asking of the Department and seeking clarity on. There may be a very good reason, but it is not immediately obvious to us what that is. If there is not a very good reason, we will draw attention to the fact that it means that we are largely accomplishing the same thing as England and Wales are accomplishing but in a different way, which means that the law will be more complicated. I guess that would probably be good news for lawyers and bad news for trafficked people who might have to engage with the law in different parts of the UK.

You have a copy of the chart that we circulated earlier. Essentially, the provisions of the Sexual Offences Act 2003 — the law at the moment — that apply are in sections 57, 58 and 59. In Northern Ireland, the proposal is to keep those three offences and to add an additional one in a new section 58A. In England and Wales, the proposal is to scrap the existing sections 57, 58 and 59 and create a new offence in a new section 59A, which would incorporate the new offence of trafficking outside the UK for exploitation.

Exactly the same principle applies to subsections (1), (2) and (3) of section 4 of the Asylum and Immigration Act. In Northern Ireland, the proposal is to keep those subsections and add 4(3A) to deal with facilitating movement in a country other than the UK for exploitation, whereas the approach in England and Wales has been to scrap 4(1), 4(2) and 4(3) and create an entirely new offence at 4(1A), which incorporates the new offence of trafficking outside the UK. As I said, there may be a very good reason for doing that differently. We just suggest that the Committee should press the Department to find out what that reason is. If there is not a good reason, it is just going to generate additional complexity with no added value, and that could be difficult for trafficked people who have to deal with the law in different parts of the UK.

I will move on to the second main point that we want to make. The Criminal Justice Bill has been spoken of as a vehicle for helping to make Northern Ireland compliant with the EU anti-trafficking directive. Initially, the decision by the UK Government was not to opt into the EU anti-trafficking directive. That decision was made in June 2010. There then followed a significant public campaign to persuade them to change their minds, which they did in March 2011, but, of course, encouraging a Government to opt in is only half the battle. One also has to encourage proper implementation.

In January this year, the Government in England and Wales announced the two changes that they considered to be necessary in order to make themselves compliant, and that involved the creation of an extraterritorial offence and an offence of trafficking internally within England and Wales. Many charities were very concerned about that, because it seemed to fall a long way short of what was mandated by the directive. We are very conscious that what a directive mandates and what one has to do in order to avoid infringement proceedings are not necessarily the same thing, but, if we are committed to trying to tackle human trafficking and putting in place the very best legislative framework possible, it seems very unfortunate to us that the Government in England and Wales seem to be going for a minimalist approach to compliance. We were very interested to see that Northern Ireland was told that it could do its own thing. We had great hopes that, rather than going for a minimalist approach, Northern Ireland might go for a more maximalist approach, thus taking the opportunity to put Northern Ireland in the driving seat as a model of best practice within the UK and beyond. We were therefore disappointed when the Criminal Justice Bill was published, because, essentially, it mimics almost exactly what England and Wales are proposing to do.

We are aware that it is possible that additional changes may be made through secondary legislation. However, in our view, if you look at all the things that are mandated by the directive but are not addressed by the Criminal Justice Bill, you can see that, although some of them could be addressed by secondary legislation, quite a few of them could not be and would need to be implemented by primary legislation. I will go through them very quickly. Articles 2(1) and 2(4) of the European directive deal with the extension of the definition of exploitation to include forced begging and making the provision for consent to be trafficked irrelevant in the context of coercion, threats and fraud, etc. That is not addressed by the Bill. Similarly, article 4(2) of the directive requires the setting out of aggravating factors to increase the penalties given to people guilty of trafficking. That is not in the

Criminal Justice Bill. Article 12(4) of the directive deals with special measures to help victims who are testifying. Incidentally, in its report of 12 September, the Group of Experts on Action against Trafficking in Human Beings (GRETA) underlined the importance of addressing that. Again, that is not in the Bill.

Article 9(1) of the directive, which looks at the issue of helping investigations and proceedings to improve the number of successful convictions, makes provision for cases to be taken even when the accusation is not made by the victim or when a victim withdraws their statement. No provision is made in the Bill for article 9(1).

In articles 9(3) and 9(4) of the directive we see requirements for more resources for effective investigation and prosecution. Provisions are made in that regard at the moment, but they are not in statute. As such, they are vulnerable to cuts should a future Administration want to change their approach, which they would not be able to do easily if that were backed up by statute. The GRETA report of 12 September underlined the importance of that and the need to increase training across the board. That is not in the Bill.

Article 11 of the European directive deals with assistance for victims. Assistance is made available at the moment but not on the basis of statute, so it is vulnerable to cuts. GRETA made recommendations on the need for clear standards to help with assistance for victims of trafficking.

Articles 14(2) and 16(3) of the directive give a choice to member states to make provision for trafficked children through a guardian or representative. It is generally understood that "representative" provides a lower level of care than "guardian". So, member states are given a choice between a maximal approach to implementation and a minimal approach. The Government in England and Wales have deliberately chosen to go for the minimalist approach, which is very unfortunate. That would seem to be the case here as well, because no provision is made for child trafficking guardians in the legislation before us.

Article 19 makes provision for a national rapporteur or equivalent mechanism. The idea behind a national rapporteur is that it is a body that is completely independent of government with a role to assess what is happening in a country in relationship to trafficking so that one can assess objectively whether anti-trafficking policy is working. The body should produce public reports. No provision is made for that in the Bill. The Government in England and Wales would claim that the interdepartmental ministerial group on human trafficking provides that function for the whole of the UK, including Northern Ireland. The difficulty with that assertion is that the whole idea of a national rapporteur is that it is supposed to be independent of government and not an inter-ministerial government committee, which, by definition, is at the heart of government. Until very recently, that body did not produce reports, which is a core function of a national rapporteur. Perhaps in the context of feeling vulnerable about that, the Government in Westminster have just announced that the group is about to release its very first report. However, it will not be a report that is objective and independent of government, and, therefore, it fails the test of a national rapporteur as far as we are concerned.

That concludes our speedy overview of the points that we want to make. Obviously, we will be delighted to answer any questions.

The Chairperson: OK. Thank you very much for that. We have the written submission that you kindly provided to the Committee. I note that you reference Lord Morrow's Bill in a lot of areas where you think this Bill could be strengthened. Has Lord Morrow's draft Bill covered all the areas in which you believe the legislation could be improved?

Dr Boucher: It does not cover the issue of national rapporteur but, in other respects, yes, it does.

The Chairperson: That is fine. I do not have any more detailed questions because you covered them all in your written submission. The Department responded to Lord Morrow's Bill, which members may not yet have had an opportunity to digest. I am happy that we ask it to respond explicitly to all your recommendations because they seem reasonable.

Mr Wells: Are you basically saying that you believe that Lord Morrow's Bill deals with this issue more effectively than the Department's proposals deal with it?

Dr Boucher: It is very important to be clear that the two provisions in the Criminal Justice Bill are, in our view, excellent. There is the query about why there is a difference of approach, but what they

accomplish is thoroughly good, so we do not want to criticise them. We are just saying that they do not go far enough and that Lord Morrow's Bill completes the gap, if you like, between full implementation of the directive and what is manifest at the moment in the Criminal Justice Bill.

Mr Wells: I want to ask a question flowing from that. You do not have to answer this question, because I realise that it has been bounced upon you. One of the major provisions of Lord Morrow's Bill is that it will follow the Swedish model and make it illegal for people to purchase sexual services. There is a fair bit of debate on both sides as to whether that works, though the Swedish statistics show that it has certainly led to a reduction in the amount of trafficking. Do you have a view on that?

Dr Boucher: Article 18 of the European directive asks member states to look at ways of reducing demand for trafficking. It clearly does not ask them to criminalise paying for sex, so, in that regard, Lord Morrow's Bill goes beyond the directive, but his Bill, as I understand it, is not designed to narrowly implement the directive in a fulsome way, although it does have that effect. In regard to clause 4, it goes beyond what is directly mandated by the directive. We welcome that provision.

The figures show that the main reason why people are trafficked to Northern Ireland is for paid sex, and one could argue that an anti-trafficking Bill that does not address the whole issue of the demand for paid sex in that context could be described as an anti-trafficking Bill with a bit of a hole in it. We very much support the provision. As you say, the evidence from Sweden and Norway clearly demonstrates a reduction in prostitution. We see that as something that is very positive and, as you alluded to in relation to trafficking, it has a direct knock-on effect. The police in Sweden have intercepted phone calls between traffickers saying that they have got some women and asking where to send them, and they are being told not to send them to Sweden because there is absolutely no point. The legal environment in Sweden is so hostile to the notion of paying for sex that you would be better off sending the women elsewhere.

Mr McGlone: I would like a bit of clarification. Essentially, are you saying that elements of the Bill are really cut and pasted from England? Did I hear you saying that earlier?

Dr Boucher: Elements of the Criminal Justice Bill, not the Morrow Bill.

Mr McGlone: No, I was not referring to that.

Dr Boucher: They are not exactly the same. They achieve the same thing but in a different way. One of the points that I was seeking to make at the beginning is that, although there is great benefit in doing things differently — the whole burden of the second part of my comments was to suggest that Northern Ireland should go further than England and Wales — if you are accomplishing exactly the same thing but in a different way, that creates legal complexity. We are thinking about vulnerable people having to navigate the law in different parts of the UK. We are just asking whether there is a good reason for that. There may well be a very good reason for that. We are just asking the question and suggesting that it would be good for the Committee to press the Department to find out what that reason is, and, if there is not a really good reason, to suggest that perhaps doing it differently is not necessarily helpful.

Mr McGlone: Secondly, you said earlier that a lot of the EU directive was just not incorporated into the Bill. Following on from the references to Lord Morrow's proposals, are you satisfied that his proposals — I have not gone into them in any detail, so I cannot speak with authority on them — would in fact fill that gap? In other words, do they cover all elements of the EU directive that you are suggesting should be incorporated into the Bill?

Dr Boucher: They do, with the exception of the national rapporteur.

Mr Baillie: The national rapporteur is not mentioned in Lord Morrow's Bill. That may be something that it might be advisable to add to it, but, currently, there is no mention of it in Lord Morrow's Bill.

Dr Boucher: It is important to stress, as I did, that doing everything that is mandated by a directive is not necessarily the same as doing everything that you have to do in order to avoid infringement proceedings. Setting clause 4(2) aside for a moment, we would not try to argue that, if Northern Ireland does not do everything that is in the Morrow Bill, plus have a provision for a national rapporteur, it would necessarily find itself facing infringement proceedings. We are saying that we are addressing an area of real human need and that this is a great opportunity for Northern Ireland to put

in place robust and progressive legislation, rather than having a minimalist approach to implementation. This is an opportunity to put in place the very best legislation and become a model of best practice in the UK. Rather than copying and mimicking London, Northern Ireland could set the pace and provide a more progressive and caring legislative framework for the victims of trafficking, and a more aggressive framework for dealing with the perpetrators of trafficking.

Mr Baillie: The Morrow Bill, in our minds, provides a great opportunity to lead the way in the UK. Frequently, Northern Ireland just follows behind the UK Government. This is an absolutely fantastic opportunity to push forward to support some of the most vulnerable people who come to Northern Ireland. That is why we are backing the Bill so strongly.

Ms McCorley: Thank you for your presentation. What are the greatest omissions in the Bill? What provisions would make a difference if they were in the Bill? The Department seems to be saying that it will not introduce a national rapporteur because the inter-ministerial group fulfils that function. As we know, however, that group would not be independent of government. How important do you think it is to insist that a national rapporteur be put in place?

Dr Boucher: I do not know that there is a scale to show that this omission is hugely more important than the others. Taken all together, they make a very valuable package. It is an interesting question; I have never thought of trying to create a scale to show which is the most important. I tend to think that it is quite difficult to make a sliding scale of the least important to the most important. I will, perhaps, go away and reflect on that, if I may. However, they form a package of provisions that, together, would really help to enhance the law in Northern Ireland.

I suppose that the provision for guardians for trafficked children is a particular area of concern because of trafficked children going missing. This would be a great opportunity for Northern Ireland, particularly because UNICEF has defined the terms of reference for child trafficking guardians, who should not be confused with guardians ad litem, who are different. People sometimes confuse the two. No other part of the UK has put in place legal provision for child trafficking guardians. To do so, which the Morrow Bill does, and very cleverly and well in our judgement, would really put Northern Ireland at the cutting edge of the legislative framework for helping the most vulnerable of all trafficked people, namely children. It is bad enough to be trafficked as an adult but to be trafficked as a child is probably — well, it is hard to conceive of a worse context within which to find oneself. Perhaps on that basis I may think about that, but, in a way, I am loathe to create a sliding scale because they are all important and they form a package.

Mr Baillie: We have seen examples of how effective the national rapporteur model has been on the Continent, particularly in Sweden. There is an independent framework, which gives the rapporteur much more strength in analysing how, for example, Sweden is implementing the law. That is really positive and has been seen to be so in Sweden. An inter-ministerial group is not independent at all. I would be very surprised if it could be anywhere nearly as rigorous as an independent national rapporteur could be. That is why we are keen to see that put forward as well.

Mr Elliott: Thank you for the presentation. I have one brief question. You mentioned the extraterritorial jurisdiction issue and indicated that there will be a huge divergence between the jurisdictions in the United Kingdom. What is the answer to that? You have identified the problems, but you have not set out a solution.

Dr Boucher: There may be a very good reason why the Department of Justice has decided to go about achieving the same end as the Government in England and Wales have achieved but in a different way. We just do not know what that reason is. We are struck by the fact that it is so different. I guess that we are mindful of the fact that one of the difficulties with dealing with trafficked people is their vulnerability. They often do not speak the language. If you bring in additional and needless complexity within the UK, it will probably be good news for lawyers but not great news for trafficked people, as they will have to negotiate different legal arrangements. We are just asking the question. We think that the difference is rather striking. If we were the Committee, we would really want to press the Department on that and ask it why it has chosen to do it differently from the way it has been done in England and Wales, given that it achieves pretty much the same thing but creates more legal complexity.

If the Department were proposing something completely different from what is being proposed in England and Wales, that would make more sense. There is a slight difference between the provisions in England and Wales and those in Northern Ireland, in as much as the Northern Ireland provisions do

not include just UK citizens but habitual residents, too. The provisions in England and Wales do not include habitual residents. So, in that way, the Northern Ireland provisions are more robust. However, one could have grafted in habitual residents using the same framework that was employed in England and Wales, rather than going for an entirely different strategy in which you have four offences rather than one.

Mr Elliott: I do not want to put words in the gentlemen's mouths, but are they suggesting that it could provide legal loopholes for people to get away with some of the actions they take?

Dr Boucher: It might do, but that is not what drives our concern. What is driving our concern is the fact that we find it striking that the Department is doing things very differently from England and Wales. As I said, trafficked people are vulnerable, and it is helpful if the law can be as simple as possible. If you have different laws in different parts of the UK, it makes it a bit more complicated. As I said, if you are doing something different in a different way, that is fine, but, if you are doing exactly the same thing in a different way, it prompts this question: why? Maybe there is a very good reason. If, as a result of this conversation, you are able to press the Department and bring that very good reason into the public domain, it would be helpful. If there is not a very good reason, we suggest that you might want to go back to the Department and tell it that the net effect is that it is doing pretty much exactly the same thing as England and Wales but that it is generating complexity. That is not helpful, particularly as we are dealing with trafficked people who are vulnerable and for whom negotiation with the law is a challenge at the best of times.

Mr Dickson: Thank you for your submission. To follow on briefly from that, I think that you have asked a perfectly reasonable question, and we will need to seek clarification from the Department on why it proposes to do things differently. Of course, it may just be that Northern Ireland has a different legal framework.

On the island of Ireland, people are as likely to be trafficked from the rest of the United Kingdom as they are to be trafficked from an entirely different European jurisdiction. Will you comment on what the legal framework is? What concerns do you have about how the Irish Government intend to implement, or have implemented, the protocol on trafficking?

Secondly, Lord Morrow's Bill has many welcome points. However, one concern that I have is that it possibly regrettably obscures the purpose of the Criminal Justice Bill, which is to deal with trafficking. Prostitution is a separate matter and needs to be legislated for separately.

Dr Boucher: The question on Ireland is important. My recollection — it may not be accurate, so I will check — is that Ireland had the option of opting in or out of the EU anti-trafficking directive in the same way as the British Government because of the deal they negotiated with the EU. I am not sure whether they opted in or not.

Mr Dickson: Do you agree that it is important to ensure that trafficking in the Republic of Ireland is dealt with as robustly as it is dealt with here within the legal framework, given that we share a common border?

Dr Boucher: Yes. If the Republic did not have as robust legislation, I would still encourage Northern Ireland to put in place legislation that is as robust as it possibly could be. However, it would obviously be desirable for North and South to put in place legislation that is as robust as possible.

Mr Baillie: We would not want a scenario where there is a form of tourism, with people going across the border. That is not a good way to boost their economy, and I do not think that anyone would say that it is.

Mr Dickson: Indeed. We do not want to see trafficking sites in the same way as we see illegal fuel laundering sites.

Mr Baillie: Absolutely.

Dr Boucher: In response to the question about Lord Morrow's Bill, we would argue that prostitution and trafficking are inextricably linked. If you look at the figures, you can see that by far the greatest reason for trafficking is paid sex. As I said at the beginning, because of that, one could argue that to

have an anti-trafficking Bill that did not seek to tackle the demand for paid sex — the principle driver for trafficking to Northern Ireland — would be a bit like having a trafficking Bill with a big hole in it.

Mr Dickson: But it does deal with it.

Dr Boucher: Yes, I know. In other words, I am saying that —

Mr Dickson: There is not a hole in it.

Dr Boucher: There is not a hole in it, which we think is a good thing.

Mr Dickson: But there are indigenous sex workers who are not trafficked, and we need to have laws to regulate that as well. There are overlapping circumstances.

Dr Boucher: We have produced a briefing on criminalising paying for sex, which we can, perhaps, let you have.

Mr Dickson: Is it wise to confuse the two areas?

Mr Baillie: I would not say that we are confusing the two. They are inextricably linked.

Mr Dickson: Lord Morrow's Bill has the potential to do that.

Dr Boucher: As our briefing demonstrates, in the first instance, the two things are inextricably linked for the reasons I described. In the second instance, if you look —

Mr Dickson: There is no hole in the legislation.

Mr Baillie: Can you clarify which piece of legislation you are referring to?

Mr Dickson: The proposed Bill.

Mr Baillie: The Criminal Justice Bill?

Mr Dickson: Yes.

Mr Baillie: We think that it does not go far enough.

Mr Dickson: But it deals with the issue of prostitution in trafficking.

Dr Boucher: The Criminal Justice Bill before us today does not address the demand for paid sex.

Secondly, a UN special rapporteur on trafficking said that prostitution involves abuses of power that are such that, as far as she is concerned, trafficking, as a definition, applies to people who are in that situation, regardless of whether they have been moved from one place to another.

Thirdly, we do not deny that there may be some people at the higher end of prostitution who might say that they enjoy prostitution and find it a fulfilling career. However, you have a choice: do you make the law on the basis of the vulnerable majority? The statistics on prostitution generally show links to suffering, class A drugs, sexual abuse of children in the home, starting in the profession when still a child, etc. In our judgement, when you see all that, it is important to frame the law out of primary regard for the vulnerable majority and not out of regard for what can sometimes be quite a vocal minority. We definitely think that jumping in that direction is the right way to go. Given the definition from the former UN special rapporteur, Sigma Huda, we would argue that even prostitution that has not involved moving someone from one country to another can be seen in the same frame of reference as trafficking.

Mr Baillie: It is worth adding that we are not trying to claim that this is perfect legislation. As you are well aware, there is no such thing. We just think that it is the best public policy option to take. We

really encourage you to consider carefully the Swedish model and to see what you make of it. It is a serious option that is plausible and that could be workable in Northern Ireland.

The Chairperson: OK. Nobody else has indicated. Thank you very much.