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children



Barnardo's
Scotland

7th Jan 2014

Barnardo's Scotland response to the proposed Human Trafficking (Scotland) Bill

Barnardo's Scotland supports and welcomes this consultation on human trafficking and is grateful for the opportunity to respond. Barnardo's Scotland is a voluntary organisation that works directly with more than 10,000 children, young people and their families. Barnardo's Scotland provides over 100 specialised services in local communities across Scotland covering fostering, parenting, substance misuse, offending, homelessness, and abuse. This response is based on the views of our practitioners and our experience of delivering services to children and young people who have experienced trafficking.

Question 1: Do you agree with the aims and summary objectives of the proposed Bill? Please indicate "yes/no/undecided", with reasons for your position.

Yes, we would agree with the general principles, aims and summary objectives of the Bill. The aims set out in the Bill proposal share a high degree of similarity with our asks relating to the Public Petitions Inquiry into tackling child sexual exploitation (CSE). This proposed Bill looks at '*government leadership, reform in criminal law, an enhanced criminal justice response and a comprehensive survivor's service*' as action points for tackling trafficking. Barnardo's Scotland has been calling for '*a national strategy on CSE, an appropriate service response for victims of CSE, a nationwide education programme, post-legislative scrutiny and a high commitment to disrupting perpetrators of CSE and identifying those at risk*'. These asks are closely related and we therefore welcome the Bill, support these commitments and congratulate the member for highlighting human trafficking as an issue that needs to be addressed.

Question 2: Do you agree with the proposal for a legal duty on Scottish ministers for a Strategy for Scotland against Human Trafficking? Please indicate "yes/no/undecided", with reasons for your position.

Yes - We would agree with the need for a legally binding national strategy. We would strongly agree with awareness raising and training for professionals and specialists. In our experience of working with victims of child sexual exploitation there is often a lack of awareness from professionals, and indicators that a child or young person may be at risk or a victim of CSE are often missed. We would also agree with the proposal to involve survivors of human trafficking in the development of any strategy, the lived experiences of those who have been through the trauma of trafficking are essential in informing the creation or development of any action plan to tackle human trafficking.

However, as noted in our other comments section, we would like any national strategy to explicitly include reference to internal trafficking.

A national strategy could put in place a framework for a co-ordinated national approach to tackling and preventing trafficking as well as supporting the victims. In our experience there is often a disconnect between key players at a local level including social, work, health, education, Child Protection Committees, the police and the third sector when it comes to effectively addressing trafficking in many areas across Scotland.

A Scottish strategy should include approaches to multi-agency information sharing, guidance on tackling trafficking and robust data collection systems, as well as look to delivering a network of direct services, and a focus on awareness raising work for practitioners, parents and children. It should also explore training provision for key workers directly working with children and young people.

Barnardo's Scotland believes that effective local strategies within the framework of a national action plan would bring the level of coherency that is required to ensure that there is a more effective response to trafficking in every part of the country.

Question 3: Do you agree with the approach to criminalising human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.

Yes - There is a very real need to consolidate the current legislative tools relating to trafficking in order to increase the number of successful prosecutions. Any new provisions should link in with the provisions relating to harbouring in the Children's Hearings (Scotland) Act 2010 as well as the Sexual Offences (Scotland) Act 2009. Specific reference in legislation also needs to be made to internal trafficking and the links between trafficking and exploitation in general.

Creating a specific offence for trafficking may act as a deterrent, delivering a strong message that trafficking will not be tolerated and perpetrators will be prosecuted where necessary. This may have more of a symbolic effect at the outset, however it may well be that criminalising trafficking starts the cultural shift needed to stamp out this crime altogether. Comparisons here can be drawn with domestic abuse legislation. There has been a seismic shift in attitudes towards domestic abuse over the last decade and it could be argued that criminalising the offence played a large part in driving the change. Abuse within the home between partners and family members is no longer tolerated. It is widely accepted that this is an intolerable crime with often tragic consequences and it is legislated against and punished accordingly. Creating a specific offence for trafficking has the potential to have the same effect.

It is important to note here that any change in legislation should come alongside work to address the wider social issues associated with trafficking and exploitation such as education and awareness raising within communities and schools. Children and young people should be taught at an early age within Relationship, Sexual Health and Parenthood Education how to develop healthy, respectful relationships and how to recognise and avoid exploitative situations.

Question 4: Do you agree with the approach to the criminal justice response to human trafficking in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.

Yes – Front line workers, police, the judiciary etc. should be specially trained to identify human trafficking, to recognise and support victims and disrupt those who perpetrate it. In our experience there is often a lack of awareness from professionals when it comes to recognising and dealing with exploitation, including trafficking. However, there are areas of good practice across Scotland, for example;

'The National Human Trafficking Unit (a branch of Police Scotland) has attended a number of engagements throughout 2013 and provided suitably tailored presentations on human trafficking to specific groups including:

- *Justice of the Peace training day in Stirling focused on the definition of human trafficking and the non-criminalisation of potential victims;*
- *Judicial Institute of Scotland event focused on Equality and Diversity issues;*
- *Meeting of the Glasgow Bar Association including defence solicitors; and*
- *Seminar series by the Scottish University Insight Institute.*

Police Officers during their Probationer Training also receive a distance learning package from the Scottish Police College on Human Trafficking. Their subsequent understanding is knowledge checked through an exam during local training. A Police Scotland standard operating procedure on human trafficking was produced by the NHTU and is available for all police officers via the Police Scotland intranet¹

Barnardo's Scotland would like to see training such as this more widely spread across Scotland so every agency and organisation is aware of human trafficking and equipped to deal with it.

Question 5: Do you agree with the approach on the non-prosecution and non-penalisation of trafficking survivors in Scotland as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.

Yes – But this could be widened to include all forms of exploitation not just trafficking. Currently non-prosecution of victims is only in guidance, for example COPFS points out that,

'Guidance states that there is a strong presumption against the prosecution of a credible trafficked victim for crimes which arise as a consequence of their trafficked status²

We would support setting a legal precedent for non-criminalisation of victims so that guidance such as COPFS is put on a legal footing, meaning no victims of human trafficking are prosecuted for offences they are forced to commit under duress and as a result of their being trafficked. We would also strongly support the proposal in the Bill that child victims of trafficking should have a blanket exemption from prosecution (page 26). Any legislation involving child victims should be focused on the welfare of the child and have their best interests at its core.

¹ HM Government (2013) 'Second report of the Inter-Departmental Ministerial Group on Human Trafficking'(33)

² Equality and Human Rights Commission Scotland (2013) 'Inquiry into Human Trafficking in Scotland – Follow on Report' (42)

Question 6: Do you agree with the approach to the Survivors Service and minimum standards for victims as proposed above? Please indicate "yes/no/undecided", specifying any elements you support or disagree with, with reasons for your position.

Yes – On the whole we would support the principle of the Survivors Service as an independent body with responsibility for making decisions and referrals for victims of trafficking. The proposal states that the Service would receive self-referrals as well as referrals from 'designated referring bodies' who have been trained and accredited by the Service. We would seek clarification on who these referring bodies would be. For example the National Referral Mechanism (NRM) has 'first responders' - would these be the same bodies and organisations?

We have a number of concerns with the way in which the National Referral Mechanism currently operates, specifically in relation to children and young people. SCCYP note that it may be more of an 'immigration screening mechanism'³ than a system which identifies vulnerable victims and has children's best interests at its core. A successful NRM referral should act as a gateway to specialist support such as safe accommodation and guardianship, potentially trafficked children should be treated as victims of trafficking until shown to be otherwise. This is particularly important due to their likelihood of going missing and returning to traffickers if support mechanisms are not put in place as soon as possible.

The UK Human Trafficking Centre (UKHTC) deals with victims who have no immigration issues, whilst UK Visas and Immigration (UKVI) make decisions about victims who do have immigration issues. We are aware that assessments made about potential victims of trafficking by UKHTC are much more likely to be concluded in a positive decision than those made by UKVI. We believe that this is likely to be attributable to the culture of suspicion that some UKVI officials have towards trafficked children, and to the strong link between NRM and asylum decisions. We believe that UKVI officials are not always appropriately placed to judge the validity of these cases as the considerations made should be based on child protection issues rather than immigration issues. Immigration officials are unlikely to have specialist child protection knowledge to make such decisions. For these reasons we agree with the proposal to have specialist staff with the 'requisite knowledge of human trafficking and experiences necessary' responsible for deciding whether someone has been a victim of human trafficking. We also agree that the service should be independent and separate from any agency dealing with immigration or asylum issues.

Barnardo's Scotland, along with other third sector organisations such as NSPCC, Migrant Help and the Salvation Army are 'first responders' for the NRM. Some of our services have reported coming up against barriers when they try and put referrals into some local authorities. In our experience, first responders are sometimes not recognised by local authority partners who often only allow referrals to the Competent Authority to come from themselves or the police. A successful referral puts a statutory duty on a local authority to provide services to that victim of trafficking, unfortunately this can place a disincentive on local authorities to identify children as victims and result in resource driven decisions being made.

³ SCCYP (2011) 'Scotland: A safe place for child traffickers? A scoping study into the nature and extent of child trafficking in Scotland'

Bearing this in mind we would have concerns with the proposals on page 35 under the 'Child-specific rights in the Survivors' Standard' regarding the appointment by the relevant authority of a guardian or formal representative. Whilst we fully support a system of guardianship (see below) we would seek clarification on whether 'appointed by the relevant authority' means that a local authority would appoint a guardian from elsewhere i.e. an independent body or that the guardian would be directly employed by the local authority themselves. As mentioned above, we believe there is a potential conflict of interest where local authorities are given responsibility for making decisions which may result in extra financial burdens. Appointed guardians should be completely independent from authorities to allow them to act in the best interests of the child.

Guardianship

We believe that to embed children's rights more firmly in this proposal it would be important to include a system of guardianship to ensure that child victims of trafficking are adequately protected. A guardian would be a statutory function to be appointed to every separated migrant child, including trafficked children, under the age of 18 at the point of referral. As many separated children are not accommodated by local authorities under a care order, there is often no agency with parental responsibility for them. A guardian would have legal responsibility for the child in order to support them through the legal processes that they are involved in and to ensure that they are allocated the services they are entitled to. Other agencies involved in supporting trafficked children cannot provide support across the range of systems that the child is involved in, such as the immigration and criminal justice systems. A guardian would also offer a single, steady presence to the child to support their recovery. We believe that establishing a system of guardianship is the only way in which separated children, including trafficked children, can be provided with the support they need.

The Scottish Guardianship Service is a joint pilot project between Aberlour and the Scottish Refugee Council, set up in 2010. It is an innovative service set up to provide vital support to unaccompanied children and young people who arrive in Scotland, including those who have been trafficked. An evaluation of the pilot in 2013 concluded that the service '*supported organisations and institutions to meet their statutory duties to safeguard and promote the welfare of children and young people, in terms of both process and outcomes, as intended under GIRFEC*'⁴ Barnardo's Scotland welcomes the Scottish Government's commitment to continue funding this service whilst acknowledging the limitations of a service that doesn't have a statutory footing.

We would like to see a guardianship service put on a statutory footing, giving guardians parental responsibility so that all vulnerable children are provided with someone to act in their best interests, help them access appropriate services and support them through any formal processes to make the best decisions about their future. Most importantly the guardian should be independent from authorities in order to allow them to act in the best interests of the child. Affording all trafficked children an independent guardian would comply with recommendations from

⁴ Crawley, H. & Kohli, R. (2013) '*She Endures With Me - An evaluation of the Scottish Guardianship Service Pilot*'

international directives such as the European Union directive⁵ and the UNCRC⁶. We therefore support the sentiments of the consultation that any approach towards human trafficking should 'entail a scheme which is independent and hence unambiguously dedicated to the best interests, human dignity, and long-term safety of those who experience trafficked exploitation' (page 29) and believe a system of guardianship would go some way in achieving this. End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT UK) have developed a model of guardianship which we believe illustrates an example of how this may be done.⁷

Westminster have rejected proposals to introduce a system of guardianship in England and Wales, claiming that Independent Reviewing Officers (IRO's, employed by local authorities) do this job already. We would encourage the Scottish Government to take cognisance of missed legislative opportunities south of the border and bring about their own statutory system of guardianship. We believe this would set Scotland apart from the rest of the UK and support the Scottish Government's commitment to make Scotland 'the best place in the world to grow up'.

Other comments

Third Sector Involvement

Reference is made in the document to '*public, private, and civil society sectors*' in relation to working together to combat trafficking.

(Biii page 13) 'effectively involve and utilise the private sector and civil society bodies in Scotland against modern slavery'

The term civil society is a broad one and subject to a variety of definitions. Whilst we acknowledge that the third sector may fall under the umbrella of civil society we are concerned that the third sector is only directly mentioned once in the entire Bill. We would suggest that more is included in the Bill to highlight the role of the third sector, especially in supporting victims of trafficking which is one of the main facets of the Bill. Barnardo's Scotland and many other third sector organisations work tirelessly with victims of abuse, exploitation and trafficking. The third sector is often best placed to support victims of abuse as they are independent of any statutory agencies or authorities. Victims are often wary of statutory agencies, meaning they are less likely to accept support from them. This becomes even more of an issue when dealing with victims of trafficking, immigration and asylum concerns are often unavoidable and victims may be anxious of any contact with the UK Border Agency or other associated authorities.

The Scottish Guardianship service is one example of the third sector working to support victims of trafficking in Scotland.

⁵ The European Parliament and the Council of Europe Union (2011) Directive 2011/36/EU of the European Parliament and the Council: Article 14:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁶ United Nations Committee on the Rights of the Child (2005) General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin: paragraph 33

⁷ ECPAT (UK) (2011) '*Watch over me: A system of guardianship*'
http://www.ecpat.org.uk/sites/default/files/watch_over_me.pdf

Internal Trafficking

Barnardo's has been tackling child sexual exploitation since 1994 and is the leading provider of support for sexually exploited children with over 20 specialist services in the UK. At present, Barnardo's Scotland has two services working on CSE issues, Safer Choices in Glasgow, and the FACE service (Fighting Against Child Exploitation) in Dundee, in addition, we have a sexually harmful behaviour service, Skylight/Lighthouse, in Edinburgh.

Child sexual exploitation is a form of sexual abuse but is often talked about in relation to trafficking as there are many cross-cutting components such as recruitment, coercion, abuse of power and exploitation. Although the two are undeniably linked, in our experience, conflating the two can be problematic in that people may not recognise CSE if they are only looking for obvious signs of trafficking and a stereotypical victim of trafficking. We would therefore agree with the argument in the Bill proposal that trafficking should not be seen as an asylum or immigration issue and therefore one that is outside the reach of the Scottish Government. Trafficking is an abuse of human rights; it should not be seen as a cross border issue to be dealt with by Westminster.

We recognise that the term trafficking often conjures up images of foreign nationals being smuggled into the UK to be sold into a life of servitude. However in our experience, the problem of internal trafficking is much more prevalent.

'Not only is internal trafficking recognised at a global level, many countries believe it to be more prevalent than cross-border trafficking. Evidence suggests that as Law Enforcement tightens controls affecting cross-border trafficking and international terrorism, traffickers due to less risk & high profit prefer internal trafficking'⁸

That 'crossing a border is required in order to be trafficked' is one of the common myths surrounding trafficking. Internal trafficking is recognised in the Scottish Government 'Inter-Agency Guidance for Child Trafficking' (2013), highlighted in the Home Office document 'Safeguarding children who may have been trafficked - Practice guidance' (2011) and legislated against in the Sexual Offences Act (2003) (Section 58). The proposal itself notes that 'trafficking need not have a cross border element' (p.16)

Internal trafficking involves the movement of human beings around the UK for the purposes of exploitation, more often than not sexual exploitation. Our services have countless case studies of children and young people who have been groomed and exploited by an older person before being moved around to various geographical cities and towns around the UK where they will continue to be exploited.

A culture shift is needed to make people aware that trafficking can involve people being forced against their will into extremely dangerous situations within the UK. With this in mind Barnardo's believes this Bill could benefit from a specific reference to internal trafficking. Internal trafficking can be defined as the trafficking of people within state borders (where the nationality of victims and perpetrators is irrelevant).

⁸ NWG Network – Tackling Child Sexual Exploitation (2013) 'Understanding the application of Section 59(A) Of the Sexual Offences Act 2003 in the prosecution of Child Sexual Exploitation in the United Kingdom'

Many children and young people who are sexually exploited are moved by their coercers and exploiters to locations outside of the child or young person's place of residence to a location where sexual exploitation occurs and then returned to their original location. Our practitioners report that many young people they work with in Glasgow will know each other, despite coming from different areas of the city and even other local authorities. The links between the young people were often the same few perpetrators who had moved the young people around to different locations for the purposes of exploitation.

'There is evidence that groups ranged across the UK are not only in contact with each other forming a sophisticated network of Traffickers but have on occasions exchanged victims between groups. This should be seen as serious organised crime operating across the UK'⁹

Any trafficking legislation brought forward in Scotland should therefore explicitly include provisions for internal trafficking.

Children's Rights

The Palermo Protocol regards children as victims of trafficking whether or not they are evidenced as coerced or deceived into their situation, children cannot consent to their own exploitation. Children are one of the most vulnerable groups in our society; child victims of trafficking will therefore need different support to adults and the Bill should take cognisance of this.

We welcome the acknowledgement on page 30 of the 'distinctive vulnerability of young people'. We would however, like to see reference in the Bill to the United Convention on the Rights of the Child (UNCRC). This is the most comprehensive treaty of human rights relating to children and globally children constitute the largest number of trafficking victims.¹⁰ We therefore feel that there should be more in the Bill relating specifically to the protection of vulnerable children who have been trafficked as first and foremost this is a child protection issue.

Articles 32-36 of the UNCRC afford children protection from forced labour, exploitation, abduction, sale and trafficking. Article 11 on 'kidnapping' states that Governments should take steps to stop children being taken out of the country illegally, article 19 states the right of children to protection from all forms of violence, article 22 states that children have the right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country).

The National Guidance for Child Protection in Scotland (2010) includes a dedicated section on child trafficking, placing the issue firmly within child protection practices. We believe this could be more strongly reflected in the Bill.

⁹ Ibid

¹⁰ UNODC (2006) '*Trafficking in Persons: Global Patterns United Nations Office on Drugs and Crime*'

Conclusion

In conclusion, Barnardo's Scotland welcomes the introduction of the proposed Human Trafficking (Scotland) Bill. There is much to be done to combat the issue and this Bill addresses a number of problems and provides potential solutions. We hope that our response has been helpful and would be happy to work together with the member to develop the proposal further.

Contact

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