

PROTECTING CHILDREN FROM SEXUAL ABUSE IN EUROPE:

Safer recruitment of workers in a border-free Europe

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The following article summarises a recent report titled 'Protecting children from sexual abuse in Europe: Safer recruitment of workers in a border-free Europe.'¹ The report examines the issue of information exchange for the purpose of pre-employment vetting across the European Union. It presents options for improving cooperation in the EU to protect children from abuse. The full report is published by the National Society for the Prevention of Cruelty to Children (NSPCC) and can be downloaded in full from www.nspcc.org.uk/.

Pre-employment checks are an essential part of safe recruitment processes aiming to protect children from abuse. They allow employers to find out whether prospective employees have previous convictions for sexual, violent or drug-related crimes which may make them unsuitable to work with children, or whether they have been banned from working with children.²

The safe recruitment of people from other countries, or people who have spent time living abroad, currently presents significant challenges. Problems arise when employers are unable to easily and effectively check whether prospective employees hold criminal records in any of the countries where they have lived. If criminal record information were more easily available for this purpose, this would enable employers to choose not to recruit people who are known to have harmed children in the past.

In 2004, the Bichard Inquiry³ identified the difficulties in the UK context of checking whether foreign nationals applying to work with children are suitable to work with children, describing this as "an area of potential weakness in the protection of young people." Bichard went on to say that "Proposals should be brought forward as soon as possible to improve the checking of people from overseas who want to work with children and vulnerable adults" (Bichard, 2004).

The scale of this problem is potentially large, given the significant numbers of people who now choose to move within the European Union (EU) to seek work, taking advantage of the right for EU citizens to live and work in other EU Member States. Although most of these individuals will be law-abiding citizens, it is crucial to be able to perform background checks on all those seeking work with children to minimise the risk of abuse.

POTENTIAL RISKS POSED TO CHILDREN

In 2004, the case of Michel Fourniret showed what can happen if workers from abroad are not properly checked. Fourniret, a French citizen, had convictions for a series of murders and sexual assaults against children before moving to live in Belgium. As the authorities in Belgium were not aware of his previous convictions gained overseas, Fourniret was able to start working in a school. He was then able to use this position to commit further murders and sexual assaults against children.

Evidence suggests that people who have been

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convicted of sexual offences against children are increasingly travelling to other countries.⁴ What we know about the behaviour of sex offenders also indicates that offenders may seek to exploit differences between countries' systems to evade detection or abuse again by obtaining employment with children. This is made possible by the fact that in some EU member states it is easier to get jobs that provide access to children than in others.

WHY IS IT DIFFICULT TO OBTAIN AND USE THE INFORMATION NEEDED?

Lack of effective systems of information exchange

No dedicated systems are currently in place to enable the swift and accurate exchange of criminal records information between EU countries for use in pre-employment checking. At present, responsibility for seeking this information often rests with individual employers, who must first find out how to access criminal records information from other countries. These records can be very difficult to obtain, and employers may lack the time and energy needed to carry out these time-consuming checks.⁵ In addition, some countries may be reluctant to release information to other states for use in vetting.

Difficulties in understanding and applying the information sent

When information can be obtained, it may be difficult to use it. For example, if the information is written in another language or with reference to legal terms which are difficult to interpret, the employer may not be able to understand and use it properly. The fact that states have such different rules about data storage and applicability also means that there may be limitations to the data, and employers need to be aware of this. For example, in Sweden, if an individual gains no subsequent convictions, their criminal records for serious crimes are deleted after 10 years, and this may vary considerably from the rules in other countries.

Conflicting legal definitions

The legal definition of a particular crime often differs across the 27 countries. There are also diverse rules on what the consequences of certain crimes should be. This can mean that when national authorities share conviction information, they may not easily be able to identify equivalent offences in national law. This is a significant practical barrier to the effective use of criminal conviction data.

Different vetting and disqualification rules around Europe

European countries have varying rules dealing with the vetting of prospective employees. For example, in the UK, it will soon be the case that anyone whose work is likely to bring them into direct contact with children, in whatever capacity, will be subject to pre-employment vetting.⁶ However, the rules are very different in Poland, where most people working in children's homes do not have to be checked before they are employed, and in Sweden, which allows people to work in the health care sector without being vetted.

In addition to differences in rules governing who should be vetted, there are also differences between the systems used to prevent unsuitable people from working with children. For example, some countries, such as the UK, have a system of employment disqualification through which certain individuals can be permanently banned from working with children, based on their previous conduct. In other countries, employment disqualifications are never issued, and employers rely instead on an 'implicit' system, whereby they must make decisions after reading a prospective employee's criminal record extract. At present, if a person has been banned from working with children in one country, it is unlikely that other countries will recognise and apply this ban.

When applying disqualifications or making recruitment decisions, while the states or the EU are in agreement that sexual crimes are sufficient grounds for preventing an individual from working with children, there is no such clarity relating to convictions for violence or drug-related crimes. Such differences present serious challenges to reaching agreement at EU level to help address the problems described.

Previous solutions discussed at EU level

The EU has previously agreed or discussed a number of initiatives aimed at tackling child sexual abuse and exploitation. These are a useful basis for further cooperation, but they do not make sufficient provision for ensuring that unsuitable people are

prevented from gaining employment with children when they move across borders.

In 2003, the European Council reached an agreement on the need for practical measures 'on combating the sexual exploitation of children and child pornography.'⁷ This agreement requires Member States to ensure that individuals convicted of certain offences are prevented from working with children.⁸ However, these measures do not contribute to resolving the differences in vetting and disqualification rules outlined above. It is also not clear to what extent the new rules have been implemented by all Member States.

In 2004, Belgium proposed an initiative to enable the 'mutual recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children' across the EU.⁹ The introduction of such a system would mean that if an individual had received an employment ban in one EU country then this disqualification would be recognised and upheld across the whole of the EU. Despite the need for such an agreement, the proposal has faced political and practical obstacles, and negotiations have now stalled.

Main initiatives currently being pursued at EU level

Several countries are currently involved in work which aims to improve the exchange of criminal records information between the countries of the EU.¹⁰ The main focus of this work aims to ensure that countries hold all the conviction information about their own nationals, wherever the conviction was obtained, rather than centralising information in one common EU database. This means that when, for example, a UK national is convicted of a crime in Slovenia, the Slovenian authorities should notify the UK authorities so this information can be stored on the UK criminal record system.

Ensuring that Member States hold all criminal record information about their own citizens, including convictions obtained in other EU Member States, should in theory make it easier to access relevant information for use in pre-employment checking. However, a shared EU database that identifies persons convicted of sexual offences against children could greatly facilitate efforts to protect children. In 2005, the European Commission proposed the establishment of a 'European index of offenders'.¹¹ However, this proposal was rejected, as Member States were not prepared to centralise information about their citizens on such a database.

The EU is also addressing the difficulties that

Member States experience in storing and making use of each other's criminal records data. These problems include the doubts which can exist about the reliability of the information sent from other countries and the fact that in some cases, the data sent is incomplete and difficult to understand. Work on creating a 'standardised European format' for information exchange that would allow information to be exchanged in a uniform, electronic and easily machine-translatable way is still in its early stages.

Despite ongoing work on the initiatives outlined above, it is important to note that all of these schemes are primarily aimed at facilitating the exchange of information for use in criminal investigations. For this reason, it is likely that the agreements will not also oblige Member States to pass on information for the purpose of pre-employment checking, although there are signs that an extra clause on sharing information to prevent child sexual abuse will be added to an agreement on criminal record information sharing which is currently being negotiated.¹²

CONCLUSION

An increase in the movement of people across EU borders for employment and other purposes, combined with some high-profile child abuse cases with a cross-border dimension, and what we know about the behaviour of sex offenders, is leading to a growing awareness among decision-makers, professionals and the public of the need to address the significant loopholes in countries' capacity to protect their children under these circumstances. More needs to be done to reach a point where employers are easily able to access the necessary information to enable them to make sound recruitment decisions. There is a clear need for more groundwork to be done in developing a consensus and forging a way forward, negotiating the legitimate differences between national approaches and systems.

All EU Member States have ratified the UN Convention on the Rights of the Child and so have a responsibility to cooperate where necessary to prevent the abuse and exploitation of children. The cross-border movement of people calls for child protection systems that reflect this commitment. It is necessary to put in place cross-border mechanisms to protect children from abuse by persons in positions of trust. Rather than waiting for more high-profile cases to galvanise them into action, Member State governments and the EU should be prepared to take action now, based on what we know about sex offenders and how to minimise the potential for them to abuse children.¹³

FOOTNOTES:

- 1 Fitch et al (2007) *Protecting children from sexual abuse: Safer recruitment in a border-free Europe* London: NSPCC
- 2 It should be noted that other measures are also needed to ensure that children are protected: employers should conduct suitable interviews, take up references and provide appropriate training and supervision after appointments have been made.
- 3 The Bichard Inquiry was established to examine the failings of child protection procedures in Humberside Police and Cambridgeshire Constabulary.
- 4 CEOP Strategic Overview 2006-07
- 5 Employers may also not have the appropriate expertise to analyse the information nor to understand the risks to children posed by sex offenders or others who wish to exploit their position of power and trust.
- 6 As outlined in the *Safeguarding Vulnerable Groups Act 2006*
- 7 Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.
- 8 'Offences concerning sexual exploitation of children' (Article 2), 'Offences concerning child pornography' (Article 3) and 'Instigation, aiding, abetting and attempt' (Article 4)
- 9 Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a Framework Decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences against children.
- 10 These include a 2005 proposal for a 'Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States' COM (2005) 690 (<http://europa.eu/scadplus/leg/en/lvb/l14500.html>), on which a general approach was reached in June 2007.
- 11 White Paper of 25.1.2005 on exchange of information on convictions and the effect of such convictions in the European Union, COM (2005) 10 final
- 12 Proposal for a framework decision on criminal judicial cooperation: exchange of information extracted from criminal records between Member States COM (2005) 0690 final.
- 13 A list of detailed recommendations are available in the full report.

