

NSPCC

Response to

CPS Consultation on the Policy Statement Human Trafficking

NSPCC
Weston House
42 Curtain Road
London
EC2A 3NH
Tel: 020 7825 2500
Fax: 020 7825 2505
www.nspcc.org.uk

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*ChildLine is a service provided by the NSPCC
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Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively;
- Provide advice and support to ensure that every child is listened to and protected;
- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child;
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not;
- Campaign for changes to legislation, policy and practice to ensure they best protect children;
- Persuade everyone to take personal responsibility for preventing cruelty to children;
- Inform and educate the public to change attitudes and behaviours towards children;
- Use our statutory powers as necessary to protect children.

Trafficking Experience

The NSPCC's experience and knowledge of trafficking comes both from the NSPCC's services and from research and policy work. Within the UK, the NSPCC runs the Child Trafficking Advice and Information Line (CTAIL). CTAIL is funded by the Home Office and Comic Relief to give advice and support to professionals working on trafficking issues, including social workers, police officers, health workers, the UK Border Agency, teachers, foster carers. CTAIL provides advice and ongoing support when there is a concern that a migrant child has been trafficked into the UK.

The work is varied and entails giving advice about both trafficking and child protection procedures. CTAIL ensures that the right agencies are involved in each case by making referrals to other agencies, such as children's services, solicitors and immigration, and advocating on behalf of the young person. CTAIL also specialises in discussing safeguarding issues and plans with professionals and young people and is also involved in writing expert witness court reports. CTAIL disseminates this knowledge and expertise by delivering training and awareness-raising presentations.

The NSPCC is a member of End Child Prostitution, Child Pornography & the Trafficking of Children for Sexual Purposes (ECPAT UK) and has worked as a sole organisation and collectively with other members of ECPAT on child trafficking at both national and European level for several years.

Q1&2. Does the introduction explain the reason for the document clearly and show how much importance the CPS places on tackling human trafficking? If not, please suggest how we could make this clearer. Are the definitions of human trafficking & smuggling clear.

Definition of Human Trafficking

The NSPCC recognises the widely used definition of trafficking from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol¹), which states that trafficking in persons is the act of “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”² The Palermo Protocol makes absolutely clear that the consent of the child victim to the trafficking is irrelevant to defining a child as having been trafficked: ‘the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered ‘trafficking in persons’ even if it does not include any of the means set forth’. Children are defined in the Protocol (as they are in the UN Convention on the Rights of the Child) as those less than 18 years of age.

The NSPCC would like to see a clear policy statement within the definition section of the document that child trafficking is a distinct form of trafficking. This should also be supported by a statement within the first paragraph clarifying that child trafficking is first and foremost a child protection issue. Whilst this is woven into the document and addressed in the section on child victims, it would be a much more powerful message to state this at the start of the document.

We would like the document to make specific reference to the Palermo Protocol and to specify that children are a special case in that they cannot give informed consent for their own exploitation.

The NSPCC welcomes the acknowledgement in the definition of Human Trafficking that trafficking is a process, dividing trafficking into the Act, the Means and the Purpose. Child trafficking can be said to exist from the time a child is recruited to the time that s/he arrives, regularly or irregularly, in a country and is exploited.

However, we consider that the bullet point on children, currently included as a sub-section of “The purpose”, should be integrated into the main text. It needs to come before “The means” and “The purpose” as there are specific issues relating to the means and the purpose that relate directly to children. It is essential that the policy statement should start with a clear acknowledgement of the vulnerabilities of children who are trafficked and identifies that they are not simply a sub-set of human trafficking.

¹ For a summary of the Palermo Protocol, go to the website of the United Nations Office on Drugs and Crime www.unodc.org/unodc/en/trafficking_human_beings.html

² Article 3, paragraph (a) of the Protocol goes on to say: exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

While it is acknowledged in the text that identifies the Means that coercion can take different forms, there are clear differences that relate to children that need to be stated more explicitly. It has been reported that it is easier for traffickers to target children than adults through coercion, deception or manipulation as they are more dependent on adults and are less able to escape an exploitative relationship³. Children may be abducted by traffickers, or handed over by their parents in the belief that they will be given education or “appropriate” employment, either because of the parents’ own poverty and desperation, or because they have been threatened and are terrified of reprisal from the traffickers. There should be clarification that children are victims of trafficking if they are moved for the purpose of exploitation whether or not they have been deceived or forced. This point of difference is particularly significant when considering the implications of coercion and duress. Children may be coerced or under duress in different ways to adults. This is discussed later under the section on prosecution of victims. It also shows how children’s experiences of trafficking may be different to adults and how their relationship with their trafficker may make it harder for them to be identified or to disclose that they are trafficked.

The description of the different types of exploitation to which people are subject should be widened to include begging and engagement in criminal activities. This would be consistent with the definition in the proposed EU Framework Directive⁴ and the definition used in *Safeguarding Children who may have been trafficked*⁵, the supplementary guidance to *Working Together to Safeguard Children*. Including the criminal activity definition would also reflect recent concern in the UK⁶ about the high numbers of children who are being trafficked into the country for the purpose of forced labour in cannabis cultivation. ECPAT UK describes the process as follows⁷: *‘Made to work in ‘cannabis factories’ by organised criminal gangs, children are robbed of their freedom and subjected to extremely hazardous conditions. The gangs also use debt bondage and the threat of reprisals against the children and their families to prevent them from trying to escape’*.

Evidence from CTAIL quarterly reports show that over the last three years they have seen an increase of the number of children trafficked and forced to work on cannabis farms. Since the service started 57 Vietnamese children have been referred. During the period May 2010 – July 2010 nine Vietnamese children were referred with concerns about exploitation in relation to cannabis cultivation.

Another category not mentioned in the definitions is irregular adoption; there is some evidence of younger children, mainly babies, being trafficked for this

³ Group of experts on Trafficking in Human Beings set up by the European Commission in 2004.

⁴ EU Directive on preventing & combating trafficking in human beings & protecting victims

⁵ DCSF & Home Office 2008 - Safeguarding Children who may have been trafficked

⁶ CEOP - A scoping study into the outcomes for children & young people encountered in cannabis factories in the UK. March 2009

⁷ ECPAT UK, Safeguarding children trafficked to the UK to undertake forced labour in cannabis factories, Child Trafficking no.1, 2010

purpose. The NSPCC proposes that the policy statement should also make reference to the possibility of trafficking for irregular adoption.

Q3. Is the role of the CPS and the explanation of how we make decisions to prosecute clear? If not, please suggest ways in which we could make these two sections clearer.

This section is clear but it would be useful to state the importance of liaison with the Home Office if there is an immigration matter outstanding. The Home Affairs Committee report on Human Trafficking⁸ identified that where this close cooperation does not occur it can increase the vulnerability of the victim. Co-operating with the prosecution of their traffickers can make the victim more vulnerable upon return to their country of origin. This may be of significance to immigration decisions.

Recent research from the NSPCC and the University of Bedford, "Breaking The Silence"⁹, identified the culture of disbelief that surrounds child trafficking. The authors found that the level and complexity of the abuse experienced by victims meant that practitioners often found it difficult to comprehend what the young person had been through. This contributed to a culture of disbelief. This point is reiterated by the young people whom we encounter through our services. While we know from the work of CTAIL that there is greater awareness and understanding of trafficking the culture of disbelief still needs to be addressed. It would be very helpful to acknowledge its existence in the policy statement. Recognition of children and young people's experience would begin to challenge its existence.

Q.4 Have we provided enough explanation of how we build prosecutions in human trafficking cases? Is there enough explanation of the victim's role and what can be done to support victims and witnesses?

We welcome reference to the Achieving Best Evidence guidance and would welcome reiteration in this section of the importance of specific measures and support for children who have been trafficked. We recognise that it is covered in the section on children but would like to see it cross-referenced here, as children should always be treated as vulnerable witnesses and have the benefit of special measures.

Child trafficking is a form of child abuse. The CPS policy statement confirms that children should have been referred to Children's Services. For consistency, and to ensure that these children and young people receive the appropriate child protection response, we recommend that the policy statement should require the CPS to check that this has happened; in cases where it has not, the CPS should ensure that a referral is made.

The NSPCC considers that the National Referral Mechanism (NRM) should be reviewed, because Child Trafficking is a child protection issue the assessment of trafficking should be carried out by a qualified social worker experienced in child protection. Currently an assessment can be made by staff that are not child protection specialists.

⁸ House of Commons Home Affairs Committee – The Trade in Human Beings: Human Trafficking in the UK .Sixth Report of Session 2008 - 2009

⁹ Pearce J., Hynes P., Bovarnick S. (2009) Breaking the Wall of Silence: practitioners' responses to trafficked children and young people, London: University of Bedfordshire/NSPCC

Finally, we would like to see reference to the use of language. Our experience of working with young people at CTAIL shows us that the language children and young people use to describe their experience is different from that used by professionals. They do not necessarily use words such as 'trafficked', 'coerced' or 'duress' when describing their experience; instead, they are likely to talk about being abused or hurt or deceived. The policy statement should refer to the fact that often the language used will be different but the experience children and young people describe would satisfy the definition of trafficking. This has implications for both the identification of children and the consideration of whether they will be prosecuted.

The *Breaking the Silence*¹⁰ research stated that:
In many cases, children and young people's own description of what had happened to them included talk about trust and of pain, hurt and abuse. Children and young people used these terms more widely than terms such as exploitation and trafficking.

Q5 Do we show clearly how we will deal with children as victims and witnesses and our policy where a child may face charges for offences they are forced to commit whilst in a coerced situation? If not, please state ways in which we could do so.

Trafficking is a Child Protection Issue

Our practice experience shows us that children are particularly vulnerable to trafficking because of their dependent state, and require a distinct response. The fact that child trafficking is a child protection issue requires that decisions and actions concerning the child should be underpinned by a consideration of her/his best interests. This should be stated within the policy statement.

We consider that the section on child trafficking would also be strengthened with an introductory paragraph describing how and why children are more vulnerable. The paragraph on identifying victims could then be more focused on detailing the many different ways that children and young people are usually identified. This would help to develop an understanding of the various ways children are discovered and help to breakdown stereotypes that may exist, such as the all trafficked children being involved in the asylum process. It would also help to challenge preconceptions and give a picture that is more reflective of the range of children's experiences.

It is important that the policy statement should acknowledge the very real risk of trafficked children going missing. This is an emerging trend that CTAIL has identified and has been evidenced in various recent reports, including a studies by ECPAT.¹¹

¹⁰ Pearce J., Hynes P., Bovarnick S. (2009) *Breaking the Wall of Silence: practitioners' responses to trafficked children and young people*, London: University of Bedfordshire/NSPCC

¹¹ ECPAT UK (2007) *Missing Out A study of Child Trafficking in the North West, North East & West Midlands*

ECPAT UK (2004) *Missing Out*

The section on when to prosecute actually deals with two separate issues. It would make it easier to understand if it were divided into two sections: a) decisions about when to prosecute the traffickers and b) what to do when the victims have been identified as committing a crime.

Prosecuting the traffickers

Trafficking is a grave and serious crime and traffickers should be held to account for their actions. While consideration of the victim will always be a factor in decisions about prosecutions involving child victims, all prosecution decisions should consider the child's best interests and be based on a full risk assessment of how the prosecution will potentially affect the child's safety.

We welcome the recommendation that *Safeguarding Children: Guidance on Children as Victims and Witnesses* and *Achieving Best Evidence* should be with children involved in trafficking prosecutions, especially as our practice experience is that not all children are supported and enabled to provide information about their exploitation. This can result in a lack of evidence and undermine the chances of a successful prosecution. We would like to see acknowledgement within the policy statement of how difficult it is for children who have suffered abuse to disclose information and share their experience.

Non-prosecution of victims

The NSPCC supports the principle that the child or young person should be viewed as a victim of child abuse and that as a child they would have been unable to consent to their own exploitation. The Sexual Offences Act 2003 sections 47, 48, 49 and 50 deal with offences relating to children and young people coerced into sexual exploitation (which can involve committing prostitution-related offences). It is acknowledged that children are victims and should be directed to child protection services and be treated as victims of abuse by coercive and manipulative adults. We consider that it should be the same for trafficked children and young people. The child's criminal behaviour should be seen in the context of the trafficking; as such responses to children should be welfare-based.

This principle is clearly articulated in the 2008 Update to the UK Government's Action Plan on trafficking¹². There are two key objectives in the action plan to protect children from being criminalised. The action plan commits the UK Government to:

- developing effective strategies to combat the trafficking of children forced or coerced into criminal activities, such as illegal cannabis farming and street crime for the profit of organised crime gangs and
- exploring effective strategies to combat the trafficking of children for the purpose of fraudulently acquiring welfare benefits.

The current CPS guidance on the 'Prosecution of young defendants charged with offences who may be trafficked victims' is helpful in this regard, and

¹² Home Office & Scottish Government Update to the UK Action Plan on Tackling Human Trafficking July 2008

states that prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion. The guidance goes on to state that 'any youth who might be a trafficked victim should be afforded the protection of our child care legislation if there are concerns that they have been working under duress or if their well-being has been threatened.'

The definitions of 'coercion' and 'duress' are critical when considering the prosecution of crimes. Child trafficking forces us to reconsider our views about coercion and whether this constitutes duress, as it is clear from the Palermo Protocol that children are unable to give consent to their own exploitation. The guidance explains that where there is 'credible evidence of duress' the case should be discontinued on evidential grounds. This point can cause some confusion because as previously discussed duress should be irrelevant in cases of child trafficking. The definitions of coercion and duress should be based on the concept that a child cannot consent to their own exploitation. This would complement the UN definition (Palermo Protocol), that trafficking in children is distinct from that of adults in that it does not necessarily involve any coercion, deception or abuse. Using a child for the purposes of exploitation is therefore considered to be trafficking, regardless of the child's knowledge of or willingness to participate in the activity.

Our practice experience shows us that in fact many young people who have been trafficked and forced to engage in criminal activities are being prosecuted and in many cases incarcerated. This mirrors the findings from the ECPAT report¹³. What is absolutely essential is that redirection from the criminal justice system should include a child protection response. It is not acceptable that there is simply no response to the experiences and needs of these children and young people. The risk of them going missing and being re-trafficked as identified by the CEOP¹⁴ scoping study is so great that care and consideration needs to be given to their accommodation and interventions that will support them and make them less vulnerable to re-trafficking. Our practice experience at CTAIL shows us that sadly for many children it is the security of imprisonment that enables them to escape their traffickers and for an appropriate intervention to be delivered. The same level of security of accommodation and intervention needs to be provided without the criminalisation of the child or young person.

Delays in prosecution

The NSPCC would also like to see the provision for enabling postponement in the prosecution of trafficking offences, when the victim is a child, extended for a sufficient period of time after the victim has reached the age of majority.

¹³ ECPAT UK, Child Trafficking in the UK: A Snapshot, October 2010

¹⁴ CEOP - A scoping study into the outcomes for children & young people encountered in cannabis factories in the UK, March 2009

Our experience is that it may take a long time for trafficked children to disclose their experiences and to come to a realisation of what has happened to them. In recent years our Sexual Exploitation Service started to accept referrals of very vulnerable girls who had arrived in Britain from different parts of Africa and were susceptible to sexual exploitation because of their previous experiences and level of isolation. Sustained work with these girls and young women over a period of years has led to them sharing their histories with staff and what has emerged from all the histories are quite clear indicators of trafficking for sexual purposes and in one case for domestic servitude.

Support for victims

We endorse the view of Save the Children/the Separated Children in Europe Network¹⁵ that: *'Child-friendly procedures should be developed and implemented to support and protect those trafficked children who co-operate with the authorities on investigation and prosecution efforts. Such measures should support the child's participation while aiming to avoid re-traumatization'*.

We would be happy to discuss our points in further detail, and to arrange a visit to our Child Trafficking Advice and Information Line and/or our Sexual Exploitation Service in Tower Hamlets. For further information please contact Kate Tilley on 0207 825 7003 or kate.tilley@nspcc.org.uk.

¹⁵ Save the Children/the Separated Children in Europe Network (2007) Position Paper on Preventing and Responding to Trafficking of Children in Europe