

Cross-border cooperation in the European Union to prevent sex offenders from working with children

Briefing from the NSPCC, February 2007

In January 2007 it was revealed that a number of British nationals who had been convicted of crimes abroad, including 29 for child sex offences, had not had their information added to the UK Police National Computer. This posed a potential risk to children as information about these crimes was not accessible to employers to be taken into account in recruitment decisions.

One of the NSPCC's priorities at European Union (EU) level has for a number of years been the need to improve information exchange between EU Member States on people convicted of offences against children, in order to ensure that unsuitable people are not able to gain employment with children.

European Union citizens can move easily between the 27 EU countries to live and work. While bringing many benefits, this also makes it particularly easy for sex offenders to move within the EU to take up employment with access to children. NSPCC is concerned about the potential for offenders to move between systems where checks are less rigorous or non-existent, and also about the ability to check the background of people applying to work with children who have come in to the UK from other EU member states.

In 2004, the case of Michel Fourniret in Belgium highlighted a serious failure between neighbouring Member States to share information, which resulted in a convicted sex offender from France gaining employment in a school in Belgium. In the UK, the June 2004 report of the Bichard Inquiry, which was prompted by the conviction of Ian Huntley for the murder of two children in Soham, referred specifically to the difficulty of checking the background of overseas workers and concluded that, *'this is clearly an area of potential weakness in the protection of young people'*.

Child protection systems must ensure that those who are deemed unsuitable to work with children cannot gain access to them through their work, in either a paid or voluntary capacity, for example as teachers, sports coaches or in care institutions. As one element of safe recruitment procedures, employers need to be able to access information about prospective employees, including criminal records information, to ensure that they have not been convicted of offences against children or previously barred from working with children.

This poses challenges in terms of ensuring that employers are able to access relevant information, in particular criminal records and disqualification histories, about prospective employees from other EU Member States¹. In a context where information is not being effectively exchanged between countries to ensure it can be used to prevent sex offenders from gaining employment with children, this puts children at risk and undermines our ability to protect them from abuse.

What is the EU doing to address this challenge?

The EU and its Member States recognise the problem, and steps are being taken to solve it. However there is still a long way to go before a functioning system is in place.

- In 2005 EU Member States agreed on EU legislation to speed up the exchange of criminal records information². Under this system, for example, if a British person is convicted of a crime in France, the French authorities have to notify the UK authorities of this conviction, and the UK has to store the information in its criminal records. However a more radical overhaul of the system is required, so this interim measure will soon be superseded by the legislation described below.
- A more far-reaching piece of EU legislation is currently being developed to ensure that criminal records information is exchanged efficiently and effectively between Member States³. The legislation will set out the type of information which will be exchanged, and how this will be done. A standardised format will ensure that information sent between countries can be understood by the country which receives it. It is expected that this legislation will be adopted in June 2007, and is currently being negotiated among Member State governments. The European Parliament is due to publish its opinion in May 2007.
- Four Member States (France, Germany, Belgium and Spain) set up a pilot project in 2004 for an electronic system to exchange criminal records information, which was launched fully in April 2006. This was successful, for example in reducing the time it takes to receive information to only a few hours from the time of request. A few other countries (Czech Republic and Luxembourg) have already joined in and the UK government has recently announced it will join the system, which may in future be rolled out to cover all EU countries.
- A proposal was put forward in 2004 by the Belgian government for EU legislation to ensure that where one Member State has prohibited an individual from working with children (following a criminal conviction for

¹ This problem is of course not restricted to the EU. There is also a need for information on the background of people from any country applying for employment in the UK.

² Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record.
<http://www.europarl.europa.eu/oeil/file.jsp?id=5207032>

³ COM (2005) 690 Proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from the criminal records between Member States

a sexual offence against a child) this will be recognised and enforced in other Member States⁴. This is known as ‘mutual recognition of disqualifications’, or bars, from working with children. However, some countries could not support this proposal and a watered down version is on the table for negotiation by governments. The European Parliament adopted an opinion supporting this legislation in May 2006.

- The EU already has legislation in place to ensure that ‘*sexual exploitation of children and child pornography*’ are treated as serious crimes in all EU criminal justice systems, and carry effective penalties⁵.

The NSPCC’s position

The NSPCC supports these initiatives, as they are essential building blocks in developing a functioning system which genuinely prevents unsuitable people from being able to gain employment with children by moving between EU countries. We have systematically argued that the EU should prioritise reaching agreement on these solutions, and have worked closely with the Home Office.

Progress is slow, especially due to the significant differences between EU criminal justice systems and criminal records. Countries include different types of information in their criminal records and have varying standards for proving identity, for example some require fingerprints and others do not. Latvia and Malta do not yet have their records on electronic databases. With regard to disqualifications from working with children, some countries do not have a formal system of disqualification, which they argue would make it difficult for them to enforce disqualifications from other countries. In addition to this, Member States often have different views about how to legally define crimes and what the consequences of certain crimes should be.

The way criminal justice systems and structures for protecting children are organised go to the heart of national identity. Member States can be reluctant to change established ways of doing things which they perceive to work well, even if they would make cooperation between countries easier.

NSPCC Recommendations

- EU Member States, in particular the German Presidency⁶ and the UK Government, should prioritise progress on exchange of criminal records information with a view to using this information to prevent unsuitable people from gaining employment with children. We welcome the UK Government’s recent moves to raise the question with other EU

⁴ 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 committed against children, 14207/04

⁵ Council Framework Decision 2004/68/JHA of 22nd December 2003 on combating the sexual exploitation of children and child pornography

⁶ The Presidency is the country which holds the chair at any one time in the European Council, the institution which brings together the 27 Member State governments. The Presidency rotates every 6 months.

Member State governments, including at the Informal Justice and Home Affairs Council meeting in Dresden on 16th January 2007.

- The EU should support ongoing work to develop understanding between Member States about the need for effective measures to prevent unsuitable people from working with children, and to share expertise and best practice in this area, including through funding such work.

Regarding the exchange of criminal record information:

- Member States must pay particular attention to ensuring that the information exchanged may be used for purposes of employment vetting for work with children (as well as, for example, use in criminal proceedings); and that the types of information exchanged are adequate to fulfil this purpose.

Regarding the proposal for mutual recognition of disqualifications:

- While recognising that the original Belgian proposal was itself only a first step, and that subsequent measures will be needed, in the interests of reaching a speedy agreement the NSPCC supports the 'mixed approach' of the more recent Belgian proposal of 4th October 2006⁷.
- Progress on this initiative must be prioritised on the EU's agenda in particular in the Council. The current German Presidency and subsequent Presidencies should ensure that momentum is maintained.

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⁷ A detailed NSPCC briefing of May 2006 on the Belgian proposal can be downloaded at :
http://www.nspcc.org.uk/Inform/PolicyAndPublicAffairs/Europe/EuropeBriefings_ifega39937.html