

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

Briefing from the NSPCC, February 2007

Introduction

The failure to effectively share criminal record information between countries was most recently highlighted in January 2007, when 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's 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, and the effective use of this information, with particular emphasis on using this information to ensure that unsuitable people are not able to gain employment with children.

This briefing explains the challenge, and state of play in finding solutions as of February 2007, and makes some broad recommendations for action by the EU and its Member States. It is aimed at policy makers and other interested parties.

The NSPCC will continue to work in 2007 and beyond to campaign for progress in this area.

Background

Article 19 of United Nations Convention on the Rights of the Child (UNCRC) lays down that: "*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child*". In Article 34 of the UNCRC, States parties "*undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures...*".

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. Broader safe recruitment procedures should include appropriate interviews to ensure the suitability of the prospective employee, the taking up of all references and appropriate supervision and training after an appointment has been made – pre-recruitment checks are not fail-safe.

The UK system

In the UK, when recruiting to a position which involves contact with children, employers ask prospective employees to undertake a disclosure¹. This means applying to the Criminal Records Bureau (CRB) for all relevant information on convictions or cautions². Under the current system, a criminal record does not automatically lead to a disqualification. It is up to the employer to make a decision depending on what is known about the offence. However, if a person has committed certain sexual or violent offences, they will almost certainly receive a disqualification order which bars them from working in a number of specified regulated settings. If they do work in these settings they will be committing an offence.

The Government has recently made far-reaching changes, coming into force by the end of 2008³, to ensure that no sex offenders are working with vulnerable groups including children, that loopholes are closed and that decision-making about suitability to work with children is rigorous and based on clear child protection principles. Under this new system, certain very serious offences will lead to automatic disqualification of people from working with children⁴.

The cross-border dimension

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 particularly 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 people who have come in from other EU member states.

We know that sex abusers will go to great lengths to get close to children and often look for loopholes in laws and systems, including recruitment, to be able to gain contact with children. Once caught and prosecuted, sex abusers can and do gain contact with children and avoid detection by moving on to another profession or another country where their previous conviction may not be known or cannot be detected.

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'*.

¹ Under the current system there are two levels of disclosure of information, a standard disclosure and an enhanced disclosure. A standard disclosure is required for positions which lead to regular but not unsupervised contact with children. An enhanced disclosure is for positions of regular unsupervised responsibility or care for a child.

² This will include information from the Police National Computer, and the Protection of Children Act list as well as the DfES List 99 in education.

³ Safeguarding Vulnerable Groups Act

⁴ Disqualifications will be linked directly to the offence. There will be a list of offences which will mean automatic bar, a list of offences that lead to automatic bars which carry a right to review/appeal, and a list of offences where discretionary decisions by experts will be deemed appropriate. In the case of borderline cases they will be heard by the Independent Barring Board which will be made up of experts who will consider the merits of each case.

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 States⁵. 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 poses significant risks to children and undermines our ability to protect them from abuse.

There are a significant number of practical, legal and cultural challenges to making progress in this area. For example, there are difficulties such as ensuring that information sent from one Member State to another can be understood, and different countries record different types of personal information on offenders. Approaches to how to balance individuals' rights to private and family life, with the need to implement children's right to protection from abuse, also differ.

The state of cooperation between European Union countries

EU Member States have agreed to work together to prevent and combat crime, through police and judicial cooperation. Among others, 'trafficking in persons and offences against children' is named in the EU Treaty as a particular focus⁶.

There are a number of agreed or proposed EU initiatives which relate to preventing unsuitable people from gaining employment with children, either as a primary objective or as part of a broader initiative. However, while there are already some useful building blocks in place, a lot more work is needed to agree on existing proposals and proceed to further steps.

There are three main relevant areas of work which the NSPCC is aware of, within which the most significant initiatives are outlined below:

1. Improving the exchange of criminal records information
2. Ensuring that Member States recognise each other's disqualifications from working with children, where these arise from convictions for criminal offences (mutual recognition)
3. Agreed minimum rules on the criminalisation and penalisation of sexual offences against children

1. Exchange of criminal record information

a) Ensuring the Member State of nationality receives information quickly

In 2005 the EU Member States agreed to speed up the exchange of information⁷, to ensure that the criminal record in the Member State of a person's nationality is as complete as possible, as quickly as possible. Under this system⁸, 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 for exchange of information in the EU is required, so this interim measure will soon be superseded by legislation to deal with more deep-rooted problems, as described below.

⁵ 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.

⁶ Article 29, Title VI, Treaty on European Union (TEU)

⁷ 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>

⁸ This is based on the system agreed under the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters but which has proved ineffective.

b) 'Thorough reform' of criminal record information exchange systems

In 2005 discussions began on a proposal⁹ for more far-reaching reform, looking at what information would be exchanged, and how this would be organised. This would ensure, for example that information is always passed on to the Member State(s) of the person's nationality, (including both countries in cases of dual nationality). It would also address difficulties in understanding each other's criminal record information, by setting up a committee to work towards a 'standardised European format' for information, to allow information to be exchanged in a uniform, electronic and easily machine-translatable way.

The proposal has not yet been adopted and discussions are ongoing in Council Working Group meetings. The German Presidency has said it will prioritise this issue for progress. The European Parliament is due to adopt its opinion in May 2007.

During preparatory discussions for this proposal, the European Commission suggested the setting up of a 'European index of offenders'¹⁰, to ensure that information could be easily consulted. By consulting the index it would be possible to identify immediately any other Member State in which the individual concerned has previous convictions. The NSPCC supported this proposal, which would make information more accessible, in a way which respected European and national data protection and privacy laws. However, Member States rejected the idea of centralising information on EU citizens in such a database¹¹.

c) Electronic exchange of information

In 2006, four EU Member States (Germany, France, Spain and Belgium), joined later by the Czech Republic and Luxembourg – launched a system generally referred to as the 'pilot project' for exchanging criminal records information, by ensuring secure electronic communication of information. Instead of having to submit a demand for information from criminal records on paper, in the language of the country whose records are being requested, these requests can now be made electronically, using a system which avoids language problems. This means information can now be acquired by the requesting authority within a few hours. Other Member States are now looking into joining the pilot project and the European Commission is closely involved to learn from useful aspects of this project. The NSPCC welcomes the UK government's recent decision to join this system.

2. Recognising and enforcing other Member States' prohibitions on working with children

In 2004, in the wake of the Fourniret case, the Belgian Government proposed a piece of EU legislation aiming to ensure that where one Member State has prohibited an individual from working with children following a criminal conviction for a sexual offence against a child, this would be recognised and enforced in other Member States.

The NSPCC strongly supported this proposal as it is an important first step. Unfortunately, negotiations have stalled due to a range of legal and practical

⁹ 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.

¹⁰ White Paper on exchange of information on convictions and the effect of such convictions in the European Union (COM(2005) 10 FINAL)

¹¹ However, they were happy to develop a centralised database of information on third country nationals (citizens of countries other than EU Member States)

difficulties, including the fact that some Member States do not have a system of formal disqualification from working with children. Alternatives to the original initiative have been put forward for discussion, including a Finnish Presidency proposal of July 2006 and a second Belgian proposal of October 2006.

However, even the original proposal left a lot of areas which will need addressing in future, for example to take violent and drug-related offences into account, or to recognise administrative disqualifications which are not dependant on a decision from a criminal court. More detailed comments on the original proposal can be found on the NSPCC's Europe webpage¹².

3. Agreed minimum rules on the criminalisation and penalisation of sexual offences against children

In 2003, Member States reached agreement on legislation¹³ which ensures that '*sexual exploitation of children and child pornography*' are treated in all EU criminal justice systems as serious crimes and bring effective sanctions. Among other provisions, it requires Member States to ensure that it is possible to temporarily or permanently prevent someone convicted of one of the offences covered by the instrument from '*exercising professional activities related to the supervision of children*'. It is the existence of this agreed basic common approach which makes it possible for the EU to take further steps related to offences against children.

The deadline for Member States to integrate the provisions of this legislation in their national laws was January 2007. The European Commission will produce a report looking at how Member States have implemented it, in spring 2007.

Growing international awareness

In October 2006 the United Nations published a World Report on Violence Against Children, which draws attention to the range of forms of violence, abuse and exploitation experienced by children in a whole range of settings. This emphasises that "*Persons convicted of violent offences and sexual abuse of children should be prevented from working with children*"¹⁴.

A recent report of the Council of Europe's Committee on Legal Affairs and Human Rights called on its Member States "*to work towards the creation of a national body to collection information on...persons convicted of such offences [violence, exploitation or abuse], in order to produce a central file allowing the exchange of information, thus promoting the fight against these phenomena*".

The Council of Europe is also currently drafting a Convention on the protection of children against sexual exploitation and abuse. It is also running a three-year campaign entitled 'Building a Europe for and with Children', of which a key strand is protecting children from violence.

Recommendations

- The NSPCC urges the EU Member States, in particular the German Presidency and the UK Government, to prioritise progress on effective exchange of information with a view to using this information to prevent

¹² http://www.nspcc.org.uk/Inform/PolicyAndPublicAffairs/Europe/EuropeBriefings_ifega39937.html

¹³ Council Framework Decision 2004/68/JHA of 22nd December 2003 on combating the sexual exploitation of children and child pornography

¹⁴ Overarching Recommendation 9, p 22. <http://www.violencestudy.org/r25>

unsuitable people from gaining employment with children. We welcome the UK Government's recent moves to raise the question with other EU 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.

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 2006.
- The German Presidency must prioritise progress on this initiative aiming at agreement by the end of its Presidency.
- If agreement is not found by the end of the German Presidency, the subsequent Portuguese and Slovenian Presidencies should keep it at the top of the agenda for negotiations.

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*The NSPCC (National Society for the Prevention of Cruelty to Children) is the UK's leading charity specialising in child protection.
Our purpose is to end cruelty to children.
www.nspcc.org.uk*

*The NSPCC is a founding and Board member of the European Children's Network (EURONET).
www.europeanchildrensnetwork.eu*