

NSPCC position on protecting victims of child trafficking in the European Union

November 2006

A. 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's purpose is to end cruelty to children. We seek to achieve cultural, social and political change - influencing legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC has more than 180 teams and projects throughout England, Wales and Northern Ireland. Their work includes family support, assessment, counselling and therapy to children and families experiencing abuse; investigations into allegations of child abuse; and work within schools and other youth organisations to provide a voice for children and advocate their rights.

This position is a summary of the NSPCC's experience and policy work relating to the trafficking of children. It focuses on the child protection issues linked to the impact of child trafficking, primarily the protection of child victims of trafficking in destination countries. Our position is based on the NSPCC's experience in the UK. However it is clear, including from our work with organisations from other EU countries, that the challenges faced in the UK context in relation to protecting victims of trafficking are mirrored across the Union.

B. Background

The NSPCC is aware, from our services to children and young people, of the growing trend in trafficking in children for labour and sexual exploitation. Our evidence suggests that in recent years the UK has become both a destination and transit country for trafficking.

The NSPCC's experience and knowledge in this area of work comes both from policy and the NSPCC services:

- The NSPCC's Street Matters/Bfree service, which is based in London, works with children who have been sexually exploited.
- The NSPCC's Special Investigation Service (SIS) also works on issues related to child trafficking. It has supported the police and other agencies in this area, most notably on Operation Paladin Child with the Metropolitan police in 2003.¹
- At a policy level the NSPCC is a member of ECPAT UK and has worked alone and collectively as part of ECPAT UK² on child trafficking at both national and European level for several years.

¹ Operation Paladin Child was a unique study into the migration of children through Heathrow airport between April and November 2003. The NSPCC worked closely the Metropolitan Police Service, Hillingdon Social Services and the Immigration Service during this study.

Evidence from the NSPCC's services

The NSPCC has a service supporting sexually exploited young women, based in London, called Street Matters/Bfree. It was started in 1999 and provides support to young women under the age of 18 who are sexually exploited or at risk of being sexually exploited. It also offers training and consultancy to professionals³.

In recent years the service has started to accept referrals of very vulnerable girls who had arrived in Britain from abroad. The histories of these girls and young women clearly indicated trafficking for sexual purposes, and in one case for domestic work. All were fleeing poverty and/or war; some of the children were exploited in their countries of origin, and again here in the UK. Several have received social services support with housing, but little else, and all have looked to the NSPCC for emotional and practical support.

Due to the very urgent and immediate needs of the girls, a group called 'From There 2 Here' was set up to offer help, support and advice. The girls involved in the group are aged 15-17 at referral, the majority being about 15. They come from Angola, Kenya, Burundi, Rwanda, Guinea, Uganda, Eritrea, and other African states.

'Lily', an NSPCC service user, was trafficked into the country by her father's friend. Lily saw her entire family murdered because her family spoke out against the government, and had to flee to ensure she wasn't murdered too. She thinks she entered on a false passport as she was dressed as a boy and told to pretend she was deaf. She never saw or had hold of her passport.

Her only other surviving family member, her brother, was also trafficked separately. She has no idea where he is or if he is still alive. Lily was soon forced into the sex trade and she worked as a prostitute for 3 months when she was eventually referred to the NSPCC. She now has a life in London and has a baby. As she is now 19 she has to appeal to remain in the UK.

Although the NSPCC has limited information on cases of trafficking into the UK for purposes other than sexual exploitation, we are concerned that some forms of child trafficking may be hidden within families and communities and thus especially hard to identify. For example, private fostering appears to remain an unmonitored activity in the UK and open to potential exploitation⁴.

Children as victims of 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 Protocol)⁵. Child trafficking starts from the time a child is recruited, to the time that s/he arrives, regularly or irregularly, in a country and is

2 ECPAT stands for End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes. It is a coalition of nine leading charities in the UK.

3 Street Matters/Bfree defines sexual exploitation as a broad spectrum of abusive experiences ranging from vulnerability in relationships to managing violence to exchanging or selling sex.

4 This concern was evidenced in recent ECPAT research, particularly in relation to African families, where the placement of children with friends or relatives is an accepted cultural practice. The ways in which children are placed within families can become exploitative when the child is made to work excessively, is deprived of opportunities or made to feel inferior. ECPAT UK (2004) 'Cause for Concern? London social services and child trafficking', London: ECPAT

5 According to the Palermo Protocol, 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."

exploited. In general terms, children can be less capable of understanding the consequences of their actions. Even when a child 'agrees' to be trafficked and/or exploited, consent cannot be assumed and should never be used against the child⁶, as stipulated in the Palermo Protocol.

Children are particularly vulnerable to traffickers. We know from our services that there is demand for children for sexual exploitation, including production of images of child abuse, and for labour exploitation. Evidence shows that traffickers and organised criminal gangs are becoming even more profitable⁷. The EU Experts Group on Trafficking in Human Beings⁸ also 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 have fewer possibilities to escape an exploitative relationship. Children cannot always rely on the protection of their families, who are often threatened and terrified of what the traffickers may do, or believe their children will be given education or "appropriate" employment.

It appears likely that many children enter the UK without their experience of trafficking ever being identified. This could be for a variety of reasons. Practitioners may not be trained to identify trafficked children and may themselves need more information and guidance⁹. The children involved may be less aware than adults of what has happened to them.

Status of trafficked children in EU member states

Children who have been trafficked continue to be extremely vulnerable once they are in destination countries including EU member states. They may be sexually exploited and/or exploited in illegal activities or other forms of economic exploitation, exposed to violence of the exploiters and clients. They often live on the streets or in inadequate accommodation, with no adult carers and no access to health, education and social services.

They usually have no legal status and are therefore prevented from seeking protection. When identified by law enforcement authorities, in the UK and in other EU member states, they are often treated as illegal migrants and criminalised. Some children are inappropriately held in detention centres which are unable to provide the support and protection necessary for their development.

Some of the children with whom the NSPCC works have already been forced through the legal system three or four times while appealing against Home Office decisions to 'return' them to their countries of origin. The situation now for all of them is that they have, after going through a convoluted and at times distressing immigration process, been given time limited leave to remain. However, this leave to remain is only up to the age of 18. They will then have to reapply for indefinite leave. All applications will be considered on the basis of the fact that they are now adults, rather than the circumstances in which they arrived as children. It appears likely that they will be deported and returned to countries where they will have no support or means of survival. These young women will therefore be vulnerable to re-trafficking and placed at risk of further sexual exploitation.

In consultation, the children and young women in the 'From There 2 Here' Group have strongly stated that leave which is time limited causes further distress as they get settled and socialised into British society. Their links with their home countries naturally lessen as

⁶European Commission EU Experts report on Trafficking in Human Beings, 22 December 2004.

⁷European Commission Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004.

⁸European Commission Report of the Experts Group on Trafficking in Human Beings, Brussels, 22 December 2004.

⁹ECPAT UK (2004) 'Cause for Concern? London social services and child trafficking', London: ECPAT

they do not have the resources or knowledge to maintain contact, and are more unable to as they have lost immediate families, and are preoccupied with setting up lives here.

Some of these young victims of trafficking did not claim asylum for trafficking upon their immediate arrival (they may not have identified themselves as having been trafficked, understood what had happened to them or used the word 'trafficking'). This has complicated their applications for indefinite leave, and diluted the support available to them.

Another problem has been with the provision of legal advice and assistance. Legal advice offered to these young people is often of a poor quality, and as asylum law and the legal aid system are constantly changing it is proving more and more difficult for solicitors to be able to appropriately brief and represent young people.

Those who have children of their own (under the age of five), born here in Britain, also face the threat of deportation. The NSPCC is concerned that if this happens, the young children will also be returned to situations of significant harm and risk of exploitation, or that some of the young women may choose to leave their children to be taken into care in the UK, as they may deem this to be in the best interests of their child. This situation is unacceptable.

NSPCC recommendations for improving protection of child victims of trafficking

1. The need for a child rights approach to dealing with trafficked children

Children have specific rights and are entitled to particular protection under a number of international instruments. The 1989 United Nations Convention on the Rights of the Child (UNCRC), which all EU Member States have ratified, is the most comprehensive of these instruments. Several articles specifically relate to the rights of the child to be protected from violence and exploitation.

Article 19 - The right to protection from all forms of violence, injury, abuse, neglect or exploitation
Article 32 - The right to be protected from economic exploitation
Article 34 - The right to protection from sexual exploitation
Article 35 - The duty of governments to prevent the sale, trafficking and abduction of children
Article 36 - The right to protection from all other harmful forms of exploitation
Article 37 - The duty of governments to prohibit torture, cruel treatment or punishment
Article 39 - The duty of governments to take measures to ensure that child victims of armed conflict, torture, neglect or exploitation receive treatment for recovery and social integration

NSPCC believes that all actions undertaken in relation to trafficked children should be based on the principles set out in the UNCRC, in particular:

- The best interests principle: the best interests of the child should be the primary consideration in all actions concerning children.
- The right to participate: the views of children should be sought and taken into account, in accordance with their age and maturity, in all matters affecting them;
- The 'non discrimination' principle: trafficked children should be treated as children first and foremost; considerations of their national or other status should be secondary.

In accordance with Article 12 of the UNCRC, trafficked children must have the right to say what they think should happen when decisions are made which affect them, and have their opinions taken into account in decisions.

Despite the wide range of legislative and policy initiatives at national, European and international level, there are significant weaknesses in the current approach to child trafficking. For instance, the focus has been primarily on concerns of law enforcement and judicial co-operation, rather than prevention, or safeguarding children's rights.

2. Identification of victims

In our experience the victims of child trafficking are often 'accompanied' by their trafficker and are therefore not identified as being at risk of harm on entry to the UK. The NSPCC recommends clear and comprehensive guidance for social services, as well as immigration and law enforcement officials, on how to identify and protect trafficked children.

The UK Home Office is drafting an action plan on combating trafficking in human beings, which will include a section on child trafficking. The NSPCC has been lobbying for a multi-agency approach from a child protection perspective, which would put in place training programmes and ensure awareness, understanding and clear guidance on child trafficking issues across sectors including immigration services, social services, Local Safeguarding Children's Boards (LSCB)¹⁰, teachers and medical professionals. The NSPCC would like to see multi agency teams in place at ports of entry, to identify concerns about trafficking and undertake investigation and protection measures.

The NSPCC is also pushing in the UK for the creation of a telephone advice line for practitioners, in recognition that there is an urgent need for more awareness among professionals who may come into contact with trafficked children around trafficking issues. This could have a significant impact on identifying and helping trafficked children.

3. Assistance and protection

It is crucial to provide assistance and protection to suspected and identified victims of trafficking. This should include safe and appropriate accommodation; we are aware anecdotally of cases where child victims of trafficking 'disappear' from safe houses, possibly being picked up by their trafficker. Children must also be provided with counselling, health care, free legal assistance, and educational opportunities. Specialised services should be provided to meet their specific needs, including their linguistic and cultural needs, and protect their rights.

The NSPCC believes that all child victims of trafficking should have an independent legal guardian appointed to act in their best interests and support them through the process of assistance and protection.

4. Detention

Article 37 of the UNCRC requires that deprivation of liberty shall only be used as a measure of last resort and for the shortest amount of time. The NSPCC does not support the detention of children. It is also important that older children should not be treated as de facto adults, detained and placed in reception centres without adult support.

¹⁰ The LSCB is the key statutory mechanism in the UK for agreeing how the relevant organisations in each local area co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do.

4. Children testifying in the prosecution of traffickers.

There have been several successful prosecutions of human traffickers in the UK. The willingness of victims to testify has been vital in securing these prosecutions. In such cases the NSPCC believes that the best interest of the child must be paramount.

Whereas children must have the right to testify, their willingness to do so should not bear any influence on their asylum claim or their resident status. We suggest that if a child wishes to testify, then they should be enabled to do so with the necessary safeguards and procedures in place. The children should be able to understand fully the risks and benefits of their co-operation with the authorities, they have the right to be heard according to their evolving capacities and that the procedure complies with the principles of the best interest of the child and non discrimination.

5. Children in immigration and asylum policies

The contradiction in the UK and other countries between immigration and asylum legislation, and child protection¹¹, is a major obstacle to protecting children who have been trafficked.

Asylum and immigration procedures for children must be child centred and place the best interests of children at their heart. The NSPCC believes that asylum processes should recognise child trafficking as a cause of persecution on return, and that trafficked children should be seen as a distinct group. We believe that the child should have the right to remain, should he/she wish, where there is evidence that they have been trafficked.

Children who are victims of trafficking should undergo an assessment of their best interests by a multi agency panel (including child welfare agencies) and they themselves should be able to participate in this process. The NSPCC believes there should also be a duty of care to the children of trafficking victims as well as to the victims themselves.

6. Returns and the best interests of the child

It is vital to recognise the significant risks on return for trafficked children, both of being persecuted for being victims of trafficking, and of being re-trafficked. Families sometimes do not want the child back, because of the stigma attached, and in the worst cases they may be re-trafficked.

In order to ensure that trafficked persons are not sent back to a situation that endangers their life, health or personal freedom and/or would submit them to inhuman or degrading treatment, any decision to deport or return a trafficked person, including children, should be preceded by a risk assessment which should be carried out by a multi agency team. NGOs and other service agencies that provide assistance to the trafficked person concerned should be actively included in this process. Returns should only be voluntary, following the multi-agency risk assessment being carried out, and if the return is in the best interests of the child, is safe and assisted.

7. Data collection and documentation on child trafficking

¹¹ The UK has a reservation against the UN Convention on the Rights of the Child in relation to immigration control, which the NSPCC believes is unacceptable and must be removed.

While evidence from our services shows a rise in the number of children being trafficked into the UK, it is very hard to obtain reliable and accurate data on the extent and nature of child trafficking, owing to the lack of standardised information collection systems based on common definitions, and the clandestine nature of the activities involved. Research suggests that many cases of trafficking go unidentified.¹² The NSPCC would like to see better data collection and documentation on trafficking.

The NSPCC is preparing an extended piece of qualitative research that will take place over 18 months, scoping the extent to which trafficking is being identified and the ways in which trafficked children are supported. The UK's Child Protection and Online Exploitation Centre (CEOP)¹³ is also undertaking a relevant data collection survey.

8. Member States should ratify the Council of Europe Convention on Action against Trafficking in Human Beings (2005)

The NSPCC urges all EU Member States to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (2005). Significantly, the treaty identifies trafficking as a violation of human rights; extends the scope of the Palermo definition to cover both transnational and internal trafficking, and trafficking not necessarily involving organised criminal groups; contains minimum standards for the protection of the rights of trafficked persons (including a reflection period of 30 days to allow them to consider); and sets out provisions related to the prevention and criminalisation of trafficking.

Currently (as of 1st November 2006) it has been ratified by 1 EU Member State and 1 accession country, and signed by a further 17 Member States. The UK is one of 7 Member States and 1 accession country who have not signed the Treaty.

EU action on child trafficking

The need to combat trafficking in human beings has risen fast up the political agenda at international and European levels. There is now a significant body of international agreements and activities in place to help deal with this growing problem.

In this context the EU has developed a range of relevant legislation, plans, programmes and recommendations relevant to combating trafficking in human beings, including child trafficking. The most significant include:

- Council Framework Decision 2002/629/JHA on combating trafficking in human beings. This aims to approximate the laws of Member States in the area of police and judicial cooperation in criminal matters relating to the fight against trafficking in human beings. It lays down lower limits for maximum sentences for trafficking in EU member states.
- Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography. This obliges member states to criminalise offences relating to sexual exploitation and images of child abuse, and lays down lower limits for maximum sentences.
- Council Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

¹² ECPAT UK (2004) 'Cause for Concern? London social services and child trafficking', London: ECPAT

¹³ www.ceop.gov.uk

- Council information 2005/C311/01 on an EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings.
- Commission Communication COM(2005)0514, 'Fighting trafficking in human beings – an integrated approach and proposals for an action plan'.
- European Parliament resolution of 17.01.2006 on strategies to prevent the trafficking of women and children who are vulnerable to sexual exploitation.
- European Parliament report of 16.11.2006 with a proposal for a recommendation to the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan.

Other initiatives include a recent Finnish Presidency conference on the 'Identification of Children at Risk of Becoming Victims of Human Trafficking'.

The NSPCC welcomes commitments in a range of EU documents to a human rights and children's rights approach to policies related to combating trafficking in human beings. The Commission Communication of October 2005 on fighting trafficking in human beings¹⁴, for example, states that "*the persons concerned, their needs and rights shall be at the centre of the EU policy against human trafficking... first and foremost a clear commitment of EU institutions and Member States (should be) to follow a human rights centred approach.*"

However, in our experience the EU and Member States need to do more to implement this kind of approach in practice. This means focusing not just on policies to prevent trafficking and prosecute the perpetrators, but also to ensure that victims receive the protection they are entitled to.

NSPCC comments on the EU's role in protecting child victims of trafficking

- In July 2005 the European Commission published a Communication 'Towards an EU strategy on the Rights of the Child'. This is the first time the Commission has acknowledged the need for a more coherent approach to children within the EU's policies, which affect children both directly and indirectly. Among the actions proposed is the establishment of a European Forum for the Rights of the Child which aims to bring together all relevant stakeholders in the area, including children. This Forum, once established, would provide an ideal opportunity to discuss what action is needed at EU level to protect child victims of trafficking and how to mainstream children's rights in relevant policies.

- Trafficked children often enter EU countries without proper documentation and are therefore seen as 'illegal immigrants'. They frequently seek asylum in destination countries. In order to provide adequate protection to child victims of trafficking it is essential that EU institutions ensure that the rights and needs of children are integrated within all EU activities relating to asylum and immigration.

Relevant EU directives in this field fail to adequately incorporate child rights, and immigration control tends to take precedence in EU policies over the implementation of the best interests of the child principle. This reflects a generally dismal picture across EU Member States in relation to the treatment of separated minors¹⁵. This must be addressed as matter of urgency. Relevant proposals and initiatives where children's rights must be

¹⁴ COM (2005) 514 Final, Communication from the Commission to the European Parliament and the Council on fighting trafficking in human beings – an integrated approach and proposals for an action plan

¹⁵ Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or from their previous legal or customary primary caregiver. Some children are totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments

taken into account include discussions in 2007 with a view to the completion of the Common European Asylum Policy by 2010, and the proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (COM/2005/0391 final). This is currently awaiting its 1st reading report in the European Parliament.

Member States must not only implement fully EU directives they have signed up to, but go beyond minimum standards to ensure that children's rights are respected in all domestic asylum and immigration policies.

- The suggestion in the European Parliament's recent report that '*The Commission and Member States should implement clear European standards and guidelines on assistance and protection for victims, irrespective of their ability to act as witnesses, including special standards for the protection of children's rights*' should be explored further. 'Soft' EU measures such as guidelines have the potential, if they reflect a rights-based approach, to provide a framework within which Member States governments and other stakeholders can work to improve the way victims of trafficking are dealt with in their countries and to provide adequate protection.

The NSPCC notes that specific guidelines would be required for child victims as opposed to adult victims of trafficking, as they have specific needs and rights. Any such guidelines must be developed in full consultation with relevant stakeholders, including trafficked children themselves and civil society.

- The EU can support the development of much-needed data on trafficking in children, including through the DAPHNE programme which aims to combat violence against women, young people and children.

- The European Parliament proposes that '*the Commission and Member States should establish a multilingual hotline with a single European number with the aim of providing first assistance to victims*'. This is an important recognition of the role that helplines can play in providing assistance to vulnerable people including children. The NSPCC has considerable experience in this field¹⁶.

The NSPCC believes that the first step towards reaching out successfully to trafficked children (and other unaccompanied minors) should be a comprehensive impact assessment/scoping study to recommend how best to do this. Such a study must take into account the expertise of child helplines around Europe, NGOs who provide support to trafficked children, and the views of trafficked children, as well as learning from existing best practice in this area. It should recommend the best way of reaching out to provide advice and assistance to trafficked children including via telephone/internet-based assistance services.

In our experience there is also a need to provide information and guidance to professionals who may come into contact with trafficked children, including law enforcement and social work professionals. As noted earlier, in the UK we are pushing for a telephone helpline for practitioners around trafficking issues.

- Trafficked children are among the most vulnerable and social excluded children in the European Union. Efforts to reduce poverty and social exclusion among migrant children, in

¹⁶ The NSPCC runs two helplines: ChildLine, a free helpline for children and young people in the UK to call to speak to a counsellor about any problem (www.childline.org.uk); and the NSPCC Child Protection Helpline, a free line for anyone (adults or children) to call if they are worried about a child's safety or welfare, or need help or advice (www.nspcc.org.uk/nspcc/helpline).

particular separated children, within the Open Method of Coordination on Social Inclusion and Social Protection should be intensified.

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