

NSPCC Scotland response to the Human Trafficking (Scotland) Bill

January 2014

Key points

- We warmly welcome and support the aims of the proposed Human Trafficking (Scotland) Bill.
- We feel that children need to be more visible in the Bill, associated guidance and the eventual strategy.
- The interplay between the proposed Survivors Service and the child protection processes requires further exploration.

NSPCC Scotland works with partners to introduce new child protection services to help some of the most vulnerable and at risk children in the country. Alongside our national adult Helpline and ChildLine, we are testing some of the best intervention models from around the world; based on the learning from all our services we seek to achieve cultural, social and political change. We deliver a range of services in Scotland, closely aligned to the early intervention agenda, which seek to prevent harmful neglect and abuse of babies and young children by providing parenting support; promoting optimum infant mental health and development and lessening the impact of parental alcohol and substance misuse. We deliver relationship focussed, early intervention work that seeks to promote healthy attachment to enable children's healthy development and resilience.

Across the UK, the NSPCC has been operating the Child Trafficking Advice Centre (CTAC¹) since 2007. CATC is a specialised service, guided by a young people's advisory group made up of young people who were previously trafficked, which advises and supports professionals in cases where there is concern that a child has been trafficked into or within the UK. CTAC data shows that trafficking can affect children from newly born to eighteen, for a range of reasons, including informal fostering for benefit fraud, sexual exploitation, criminal activity (street crimes and cannabis cultivation), domestic servitude, labour, illegal adoption.

CTAC's work involves collaborating closely with a wide range of agencies and includes; advising professionals to ensure a child protection response; casework relating to individual trafficked children, promoting multi-agency response to child trafficking; analysing and reporting on trafficking trends; advocating on behalf of the child; writing expert witness court reports and developing and delivering free training, resources and awareness-raising materials to assist organisations in identifying and helping trafficked children. In the last three years, CTAC has delivered direct training to seven thousand professionals in the UK and Africa and provided practitioners with one to one advice and

¹ http://www.nspcc.org.uk/Inform/research/ctail/ctail_wda84866.html

support on 985 individual children's cases. CTAC will be delivering child trafficking training to Immigration Officials across Scotland in early 2014.

UK wide, NSPCC runs several face to face support services aimed at young people aged 11-19 years who are vulnerable to sexual exploitation or who have been sexually exploited. *Protect and Respect*² also specifically supports young people who; have been separated or trafficked are unaccompanied or seeking asylum, are looked after children, have frequent 'missing' episodes. The service builds on 15 years' experience offering similar projects and has helped over 250 young people since March 2012.

Lastly, we deliver ChildLine, the free confidential helpline for any child or young person with any problem. Children and young people, primarily in the age group 11- 16, contact ChildLine by phone and on-line about a huge range of issues impacting on their lives, including all forms of abuse, loss and bereavement, mental health difficulties and bullying. Volunteer counsellors work with children offering them advice, support and protection where necessary.

NSPCC Scotland welcomes the opportunity to respond to MSP Jenny Marra's Private Members Bill and is strongly supportive of the Bill's vision for Scotland to move beyond the need to fulfil international obligations in anti-Human Trafficking and create unified, clear, consistent legislation around Human Trafficking that encompasses a systems wide approach. We commend the Member and her team for embracing the key components of the consensus around tackling human trafficking, as expressed in the Bill's aims and objectives.

As a child protection organisation, it is incumbent on NSPCC Scotland to focus clearly on how the proposals will be likely to improve outcomes for trafficked children. Accordingly, our responses are directed towards aspects of the Bill with most relevance to children and young people.

Child trafficking is a child protection issue and consequently requires that all decisions and actions concerning the child are consistently underpinned by consideration of his/her best interests. Our position on child trafficking derives from a child rights based approach and draws upon the key principles set out in the 1989 UN Convention of the Rights of the Child (and the optional protocol on the Sale of Children, Child Prostitution and Child Pornography), for example:

Best interests – In all actions concerning children, the best interests of the child should be a primary consideration (Article 3.1)

Survival and development – The inherent right to life and the states obligation to ensure the child's survival and development (Article 6)

² http://www.nspcc.org.uk/what-we-do/the-work-we-do/priorities-and-programmes/sexual-abuse/protect-respect/protect-respect_wda93138.html

Non-discrimination – children have a right to exercise their rights without discrimination of any kind

Participation – the child has a right to express views freely and to have these taken into account in decision making affecting him or her and

Protection – the child has a right to be protected from physical and mental violence (Article 19) economic exploitation (Article 32) sexual exploitation (Article 34) and from trafficking and abduction (Article 35).

While we welcome the Bill, we have set out below suggestions for increasing the visibility of, and improving provision for, child victims of trafficking:

- We agree that children are best identified and assisted through Scotland’s mature and interest focussed child protection system.

However, from the consultation document, it is not clear to us the interplay between the proposed Survivors’ Service³ and child protection processes. We consider it imperative that further specific consideration is given to how the child protection system can best meet the needs of child victims of trafficking. Whilst we fully understand that this is the function of the consultation process itself, it may be helpful to convene a specialist group on child trafficking, to scrutinise the proposals in relation to child protection. We would be happy to convene such a discussion to inform the passage of the Bill.

- NSPCC Scotland also suggests the entire approach to anti-human trafficking would be substantially strengthened by describing its moral imperative as being derived from children’s rights as well as human rights generally. For example, we note that Section 2 of the consultation document describes the fundamental obligations on anti-trafficking as arising from the European Convention on Human Rights and the Human Rights Act. We would stress that the United Nations Convention on the Rights of the Child also places clear obligations on Scotland, and the rest of the UK, around protecting children (from trafficking) as well as recognising their agency in decisions affecting them.

We believe that widespread political and societal recognition of children as rights holders is a vital cornerstone in reducing children’s vulnerability to exploitation and abuse. We would therefore hope that this visionary human rights legislation will help pave the way towards Scotland more fully embracing children’s rights.

Lastly, NSPCC Scotland notes the Bill’s acknowledgment of internal trafficking and would greatly welcome more clarity regarding the scope of the proposals (and intended strategy) to address the substantially nuanced area of internal child trafficking for sexual exploitation. SCCYP research (2011) points out the imperative, when discussing internal

³ The service is described on p30 of the consultation document as an ‘adult survivor advocacy service’.

trafficking, to make it clear that its most defining feature is sexual exploitation and notes that references to the term internal trafficking in the debate around the sexual exploitation of UK citizen children were scant until recently. Anecdotally, we note a growth in reference to internal child trafficking, as well as some confusion, within the wider debate and would welcome clarity as to whether the proposals are aimed at encompassing this issue. We note that internal trafficking for sexual exploitation is covered, albeit in summary, within *Safeguarding Children who may have been Trafficked* (SG, 2009) and also within the UK Action Plan. We also note that the Inquiry into Child Sexual Exploitation in Scotland, undertaken by the Public Petitions Committee, has recently reported. We hope that relevant findings from this inquiry will inform the development of the Bill. This is in full recognition of expert views and that the focus on trafficking for sexual exploitation has prevented the wider issue being recognised, with obvious impact for identification.

Question 1: Do you agree with the aims and objectives of the proposed Bill?

NSPCC Scotland greatly welcomes the aims and summary objectives. However, as above, we would stress the need for more specific reference to children within aims and objectives, for example, the need to relate Scotland's obligations and commitments on human trafficking to children's rights as well as human rights law.

Child trafficking is child abuse and we consider it vital that children are identified and assisted through the child protection system. However, greater detail is required to ensure that the child protection system can best function to identify and protect children.

In further relation to children's rights, NSPCC Scotland commends the summary objective of '*maximising the contribution to and impact of Scottish public policy to the reduction of human vulnerability that is at the heart of human trafficking*' (section 3; 35).

We deliver a suite of early interventions aimed at the most vulnerable babies and children, geared towards improving children's attachment relationships; arguably the fundamental building blocks of human resilience. This has been possible because of Scotland's commitment to early intervention which itself is addressed primarily towards reducing human vulnerability, through improving outcomes for all children.

However, we have concerns that the wider legislative agenda at present does not consider the impact on children's lived experiences, nor present a coherent vision for how the whole range of services meet the needs of children, young people and their families in Scotland⁴ Although perhaps out-with the scope of this consultation, it is vital

⁴ For example, the Public Bodies (Joint Working) (Scotland) Bill, currently before Parliament, and the proposed Community Empowerment Bill potentially have an impact on children and children's services, although these impacts do not appear to have been fully explored.

that the Scottish Government considers the impact of all policy and legislation on children.

So, whilst we hugely welcome the aspirations of the proposed Bill around public policy development, we believe the Bill should go as far as possible to embed a process of scrutiny to this effect. For example, the Scottish Government has previously considered making Children's Rights Impact Assessment a fundamental aspect of public policy development more broadly⁵. The Bill might provide a useful vehicle to ensure this becomes a reality.

Question 2: Do you agree with the proposal for a legal duty on Scottish Ministers for a Strategy for Scotland against human trafficking?

NSPCC Scotland greatly welcomes the vision of legislation underpinning a shared sense of responsibility amongst all sectors of political and civil society in preventing and addressing trafficking. We are in no doubt that the issue of human trafficking demands a strategic approach and enormously welcome the proposed legal duty on Scottish Ministers to lead the development and implementation of a Strategy for Scotland. In order that the strategy does not become the responsibility of the most obviously relevant sector (in this case, criminal justice), it may be helpful if there is a clearly stated cross cutting Ministerial duty on the face of the bill.

We welcome the detail in the proposals around the breadth of areas to which the national strategy should have regard. We note however, Wallace and Wylie's⁶ assertion that *Child trafficking should not be considered a sub code of human trafficking; it requires its own child centred approach*. As well as Paul Rigby's⁷ conclusion the (current) major concern as being that of suspected cases of child trafficking not being referred to NRM. We would call for the national strategy to incorporate a specific, distinct emphasis on child trafficking.

NSPCC Scotland strongly supports the intention *that every reasonable effort be made to involve survivors in the development of the strategy* and we seek clarification that this will include specific efforts towards involving child, as well as adult, survivors. This could usefully include strategic commitment towards a sensitive consultation / research agenda around trafficked children's experiences of the child protection response, vital in

⁵ In 2009 the Scottish Government acknowledged the crucial importance of children's rights impact assessments (CRIA) informing policy making and stated it would 'consider a trial of children's rights impact assessment in a section of Scottish Government to see how it can help promote and develop a consideration of children's rights in the policy making process'². More recently, the government asserted its commitment "throughout the rest of 2012... [to] work with partners... to develop a child rights impact assessment model for use within the Scottish Government"³.

⁶ Wallace, MM., and Wylie, K. (2011) Child trafficking: A Scottish Perspective in Commonwealth Judicial Journal 19, 1, June

⁷ Rigby, P., Murie, S., Ball, M. (2012) Child Trafficking in Glasgow The Journey So Far. Glasgow Child Protection Committee.

keeping it child centred and rooted to what the issues are. We consider it imperative that the child protection system learns from children's experiences of it, and are aware of the dearth of dedicated research agenda around young people's experiences of the child protection system underpinning its development and evolution.

Question 3 – Do you agree with the approach to criminalising human trafficking in Scotland, as proposed above?

NSPCC Scotland welcomes the proposed comprehensive legislation on the crime of human trafficking. We support the proposal of an associated offence of aiding and abetting or attempting to commit the core offence of human trafficking and believe this is crucial in prosecuting adults who abuse children through trafficking. We also believe it could be used in relation to girls over the age of 16, vulnerable to trafficking for sexual exploitation. Our understanding of grooming legislation, for example, is that the offence is intended to catch those who develop relationships with young people under 16 in order to gain their trust and persuade them into vulnerable situations where they can then be sexually assaulted.⁸

Question 5: Do you agree with the approach on the non-penalisation of trafficking survivors in Scotland, as proposed above?

Yes. NSPCC Scotland enormously welcomes the Bill's commitment to enshrine the principles of non-criminalisation in Scots Law and we welcome the absolute clarity in the proposals around the non-prosecution of child victims. This is particularly crucial given evidence of child victims of trafficking on remand or serving sentences for crimes they may have been forced to commit (ATMG, 2012). Whilst outside the remit of the current Bill, it would also be remiss of us not to raise the issue of the age of criminal responsibility in Scotland, as a barrier to the bill's aspirations '*to ensure every opportunity is taken to prevent victims being prosecuted or penalised for crimes they were forced to commit*'.

Question 7: Do you agree with the approach the Survivors Service and minimum standards for victims as proposed above?

Yes. NSPCC Scotland is aware of extensive concerns raised regarding the NRM in relation trafficked children, including the UK Human Trafficking Centre, UNICEF, Organisation for Security and Co-operation in Europe (OSCE), ECPAT UK, Scottish Refugee Council, SCCYP and most specifically Paul Rigby's (2012) conclusion that NRM is '*too closely aligned with the asylum process, resulting in the prioritising of immigration procedures which can undermine holistic, multi-agency approach addressing all the needs of the child*'. We thus welcome the vision of an independent, victim centred service based on best interest principles. Developing the service in this way should ensure the very system for identifying and supporting victims of human

⁸ Guidance: Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005, SG

trafficking does not contribute to the fear and trauma they are already experiencing but actively works to reduce and treat it, and also, crucially, empowers both victims and referrers to trust the service. This is still more vital when we recognise that some victims will have begun their 'journey' into trafficking as children, or suffered the kinds of childhood trauma, poverty, loss and/ or abuse and neglect that made them more vulnerable to trafficking in the first place.

However, crucially, from the consultation document, we are unclear how the planned Survivors Service is intended to work with children and young people, and what precisely the interface will be between that Service and child protection processes. For example what is the role (if any) of the service in supporting the identification and recording of trafficked children, given the high levels of expertise and systematic recording processes that will underpin the service? If not, what systems and drivers will be put in place to ensure that local child protection processes can sufficiently deliver these crucial NRM functions⁹? Also, where a child self-refers to the service will this result in an automatic child protection referral? What then will be the protocol, for example, for older children who do not wish to be referred on? Clarity around the interface between the service and child protection services in cases of children aged 16 and over is particularly crucial.

NSPCC agrees that trafficked children are, as summary objective 37 (e) in the consultation document suggests, best identified and assisted through the child protection system, not least because: Local Authorities have a general duty under the Children (Scotland) Act 1995 to safeguard and promote the welfare of children and young people in need in their area; National Guidance Child Protection (SG 2010) and Safeguarding Children in Scotland who may have been trafficked (SG, 2009) articulate the responsibilities of local authorities and other agencies with regards to safeguarding and promoting the rights and welfare of trafficked children; and the GIRFEC approach is in the process of being established on a statutory footing in Scotland. This also avoids complications inherent in establishing a parallel process (such as a UK wide NRM or specialist service which does not have the reach of local processes) and results, arguably, in greater ownership by all practitioners.

Nevertheless, we believe the Bill must both be more visionary and a great deal clearer in articulating how these processes are intended to work together and UK wide systems. Most vitally, we note SCCYP's 2011 recommendation that **the Scottish Government take steps to ensure that nationally agreed procedures (in safeguarding trafficked children and meeting their needs) are followed at a local level.**

⁹ As a signatory to the Council of Europe Convention on Action Against Trafficking Human Beings, the UK has a responsibility to implement a **specific mechanism** for identifying and recording cases of child trafficking.

Ultimately, the success of any system for identifying, safeguarding and meeting trafficked children's needs depends on it being fully understood and operationalised by local authorities, Child Protection Committees (CPCs) and all relevant practitioners on the ground.

Acceptance that child trafficking is potentially an issue in every local authority area across Scotland is a crucial first step. Research indicates a perception amongst practitioners, particularly in rural regions that trafficking is certainly not an issue in their area (SCCYP, 2011). In addition there is anecdotal evidence which suggests awareness is in part dependent on proximity, with CPCs perhaps paying increasing attention to internal trafficking and sexual exploitation where as it has become clear that it is an issue affecting children in Scotland.

Analyses of CTAC caller information across the UK also indicates few referrals from Scotland, with 13 in total from 2007 until present. (CTAC, January 2014) Whilst this may largely indicate a lower awareness of the service in Scotland, which we must work to address, it may also suggest low awareness of, or lack of engagement with, the issue. Research suggests that children will be best identified and assisted through local child protection procedures in areas where practitioners have direct experience, as follows:

Experience brings improved practice. Practitioners' awareness of the indicators of (child) trafficking is improved through their experience of working with the cases. As practitioners deal with the cases and face the problems presented, they begin to recognise indicators and emerging patterns that help to improve identification. Lessons can be learnt by referring to practitioners engaged in the work and building these lessons into local training initiatives¹⁰.

We have concerns that the high level of *practice based* knowledge and expertise which will be quickly built up in a national service, will be unlikely to be reflected in (the majority of) local child protection services. We would ask that consideration be given to whether a national mechanism is required to ensure specialist experience-based knowledge transfer amongst child protection practitioners.

Evidence indicates a great deal more effort is needed towards raising practitioner's awareness of child trafficking and training in identifying potentially trafficked children (SCCYP, 2011). NSPCC Scotland notes SCCYP's recommendations that child trafficking be dealt with more in-depth in child protection, as well as targeted training for those most likely to encounter trafficked children in their role. Some local authorities may need more encouragement than others to divert resources to training around child trafficking. It might be that the legislation could propose a national training strategy, with dedicated funding, to help in this regard.

¹⁰ Pearce, J., Hynes, P., Bovarnick, S. (2009). Breaking the Wall of Silence: Practitioner's responses to trafficked children and young people. NSPCC.
http://www.nspcc.org.uk/inform/research/findings/breaking_the_wall_of_silence_wda65628.html

Child Specific Rights in the Survivors Standards

NSPCC Scotland greatly welcomes the *principle* of statutory, child specific rights in standards. However, as we understand it, (potentially) trafficked children are not to be supported and protected through the service, and so we presume that statutory rights will apply to services provided by Local Authorities.

We are therefore unclear as to how a set of standards for trafficked children will work in practice and what this means for other children in the child protection system, who will not share similar statutory rights in standards. Whilst we fully understand that these are additional standards for trafficked children, our question is regarding some children being given statutory rights in the child protection system that others do not formally hold. This anomaly underlines the need for children's rights to be embraced more fully across public services.

Given the proposed standard around a guardian, consideration should be given to the findings of the pilot of the Scottish Guardianship service. We would welcome more detail on the envisaged Guardian role, particularly on how will it dovetail with GIRFEC roles of Named Person and, more importantly, Lead Professional.

Whilst greatly welcoming the principle behind the proposed standard on access to education, NSPCC Scotland is interested in whether there will be a similar standard around access to health.

Question 9: What is your assessment of the likely financial implications of the proposed bill to you or your organisation. What other significant financial implications are likely to arise?

NSPCC Scotland notes that the document anticipates a cost to the Scottish Government in setting up and running the Survivors Service, but not in relation to the child protection response to trafficked children. We feel that more detailed consideration must be given to any financial implications for the child protection response, particularly if there are training implications, for example. Without this detail there may be a significant underestimation of cost.

Additional remarks

NSPCC Scotland would also like to take this opportunity to raise fundamental questions in relation to how we empower trafficked or otherwise abused children to disclose abuse. The extensive barriers to children disclosing are well understood, as is the very low numbers of children who disclose abuse to professionals. NSPCC research with practitioners working with trafficked children (as above), albeit small scale, found that elicited disclosure was most common, whilst wider research with sexually abused children finds children who feel unable to speak are, at the same time, desperate for

someone to ask them the question¹¹. However where there is arguably a culture of fear around children disclosing abuse, lack of confidence in practitioners in dealing with it and confusion over what you can and can't say to a child who discloses (fear of contaminating evidence) there may be widespread reluctance to ask the direct question.

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¹¹ Nelson, S. (Ed) (2008). See Us, Hear Us. Schools working with sexually abused young people. The voices of young survivors from Pathway and 18 and Under and Supported by Barnardos Skylight project. 18 and Under.