

Human Trafficking Consultation
Organised Crime Branch
Department of Justice
Room 4.20, Block B
Castle Buildings
Stoney Road
Belfast
BT4 3SG

31 May 2012

Our ref: 12/PD/PLM/052

Dear Sir/Madam

Consultation on legislative amendments and Department of Justice engagement in relation to human trafficking

NICCY is supportive of developments to create new human trafficking offences which will ensure that certain acts that are currently not punishable under the criminal law will in future be treated as such. We welcome the opportunity to provide comment on the consultation, and to also provide broader advice to the Department of Justice (DOJ) in response to the request for feedback on the issue of how the Department engages with stakeholders. This response is not intended to be comprehensive but instead highlights some important issues in relation to the matter for consultation.

While the consultation exercise covers the trafficking of all persons, NICCY's interest relates to the matter of safeguarding and promoting the rights and best interests of children and young people. Within the Northern Ireland context, a distinction could be made between cases of children and young people who are subject to immigration control and at potential risk of trafficking/having been trafficked; and the trafficking of children and young people from NI, or otherwise *not* subject to immigration control (internal trafficking).

Evidence of trafficking of young people from NI for the purposes of sexual exploitation was documented in the 2011 Barnardo's NI report 'Not a World Away'¹. Indeed the

¹ Dr Helen Beckett (2011) 'Not a world away: the sexual exploitation of children and young people in Northern Ireland' (Belfast: Barnardo's).



report highlighted that seven "*local young people*" were confirmed as 'victims of trafficking' through the National Referral Mechanism (NRM) in recent months prior to the report's publication (in October 2011). On the other hand (notwithstanding NICCY's awareness of concerns regarding the NRM process, particularly in relation to persons subject to immigration control), we are aware that one child subject to immigration control was confirmed as a 'victim of trafficking' through the NRM between April 2009 and March 2011 (with reference to statistics published in a written answer by the Home Department in March 2011).

In terms of this matter, NICCY believes that the risk of trafficking of the small number of separated children subject to immigration control in NI should not be considered in isolation to the issue of the complex immigration processes (including asylum processes) to which these children are subject. Also relevant to this issue is the fundamental role of health and social care service providers. In terms of context-setting, NICCY has previously highlighted concern about the difficult interaction between the asylum and trafficking processes. We have been particularly mindful of the need for a more joined up approach between the UK Border Agency and the Department of Health Social Services and Public Safety (DHSSPS), Health and Social Care (HSC) Board and HSC Trusts. We do acknowledge a number of recent developments, including for example the publication of joint DHSSPS/PSNI guidance regarding child victims of trafficking in February 2011.

NICCY welcomes the forthcoming legislative amendments outlined within the consultation document. The two new criminal offences to be created clearly represent a progressive step in terms of UK policy regarding the prevention and combating of trafficking.

We note the advice at section 1.2 of the consultation document that "*there is little scope to influence*" the proposed legislative amendments, due to the fact that they "*are required in order to comply with the EU Directive*" on trafficking in human beings. For this reason, our comments on the proposed offences are minimal. We would however highlight as a point of principle that the obligation to comply with the Directive (by virtue of the UK deciding to "*opt in*"), does not preclude the UK from taking additional measures which would further progress the legislative and policy framework. We would also note that we have not undertaken an analysis of the EU Directive, or the issue of the UK's compliance (including NI's compliance) with the Council of Europe (CoE) Convention on Action Against Trafficking, in the context of the legislative amendments for consultation. The Department may be aware that NICCY provided advice to the Council of Europe Group of Experts on Action against Trafficking in

Human Beings (GRETA) as part of its recent UK country visit, within the context of the first round evaluation of the implementation of the CoE Convention.

As a final point regarding the new offences, we would highlight the need for DOJ to closely monitor and evaluate the impact of the legislative changes, in terms of any positive effect which they may have on the rate of prosecutions for trafficking-related offences (we are aware there has only been one NI conviction of a trafficker as of March 2012), and in relation to the scale of trafficking in NI.

In terms of the separate element of the consultation exercise regarding how DOJ "*engages with non-government organisations and others*" in relation to human trafficking, NICCY welcomes the Department's proactive approach.

As a statutory body, NICCY has a specific role and range of duties and powers relating to children's rights and best interests. The Department, the Policing Board and the Chief Constable of the PSNI are subject to the Commissioner's statutory duties and powers by virtue of Article 4 and Part II of Schedule 1 of The Commissioner for Children and Young People (NI) Order 2003.

NICCY, alongside the Children's Commissioners for England, Scotland and Wales, also has a reporting role to the United Nations (UN) Committee on the Rights of the Child regarding the periodic examination of the UK's compliance with the UN Convention on the Rights of the Child (UNCRC). Key areas of focus of the Committee's examination include asylum-seeking and migrant children, and the sale, trafficking and abduction of children. The UK Commissioners' first report to the UN Committee informed the 2008 Concluding Observations. A further 'mid-term' report was published by the Commissioners in 2011, which provided a further evaluation of UK Government policy (and policy and practice within the devolved jurisdictions, where relevant) regarding issues related to children subject to immigration control and child trafficking. In preparation for the next round of reporting on the UK's compliance with the Convention, NICCY may seek information from DOJ regarding child trafficking in order to inform the UK Commissioner's next joint report (it should be noted that this report will of course cover a range of areas related to children's rights, not least the matter of youth justice).

In terms of further links, we would highlight that NICCY engages with the Minister for Justice through biannual meetings, and will avail of this mechanism, as appropriate, to discuss matters regarding the risk of trafficking of children, both those from NI and those children subject to immigration control. During the most recent meeting, NICCY

informed the Minister of a piece of research which the office is planning to commission regarding children subject to immigration control in NI. We are happy to keep the Department informed of the research, as plans are developed. Engagement with DOJ officials/PSNI officers may be sought by NICCY/the appointed researchers as part of that project.

As a final point, we would also highlight the importance of ensuring that both the Department and the PSNI, where relevant, consult with NICCY at an early stage in the development of policies and guidance relevant to the issue of child trafficking, and any related areas of work with relevance to children subject to immigration control. We would note, for example, that NICCY was not approached as part of the targeted consultation on the joint DHSSPS/PSNI child trafficking guidance published in 2011. In this context, we would highlight our statutory duty to provide advice to relevant authorities on matters concerning children's rights or best interests, and the power to issue guidance on best practice on the same.

Please do not hesitate to contact my office if you require any further information.

Yours faithfully

A handwritten signature in black ink, reading "Patricia Lewsley-Mooney". The signature is written in a cursive, flowing style.

Patricia Lewsley-Mooney
Commissioner