

Organised Crime Branch
Protection and Organised Crime
Department of Justice
Castle Buildings
Stormont Estate
Belfast
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17 October 2018

To whom it may concern

Re: Draft Modern Slavery Strategy 2018-2019

Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years if the young person is disabled or is care experienced. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the opportunity to comment on the Draft Modern Slavery Strategy 2018-2019. We note that this is not intended to be a comprehensive response but instead highlights the key international and European recommendations that the UK and devolved Governments should be addressing in regard to child trafficking and exploitation. We then make a limited number of comments in relation to safeguarding children and young people at risk of human trafficking and modern slavery within the draft Strategy.

International and European obligations

The Department will be aware of the Concluding Observations of the United Nations Committee on the Rights of the Child to the UK Government and devolved administrations issued in July 2016.¹ For ease of reference the most relevant recommendations are provided below and should be incorporated into the draft Strategy:

The Committee recommends that the State party, including devolved governments, overseas territories and Crown dependencies:

- (a) Systematically collect and publish comprehensive and disaggregated data on child exploitation and abuse, including through mandatory reporting, in all settings;*
- (b) Develop and implement comprehensive multisectoral strategies on child exploitation and abuse, including online, to ensure effective prevention, early detection and intervention, at the national and devolved levels, in overseas territories and Crown dependencies;*
- (c) Implement the recommendations of the Marshall Inquiry into child sexual exploitation in Northern Ireland;*
- (d) Further develop comprehensive services to support children who are victims or at risk of sexual exploitation and abuse;*
- (e) Strengthen the capacity of law enforcement authorities and the judiciary to detect and prosecute child sexual exploitation and abuse, and grant effective remedies to the child victims;*
- (f) Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (paragraph 45).*

The Committee recommends that the State party introduce, as a standard, video recording of the interview with a child victim or witness during investigation and allow the video recorded interview as evidence in court (paragraph 81).

The Committee recommends that the State party fully implement the recommendations contained in its concluding observations on the initial report of the State party, on the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/GBR/CO/1), in particular that the State party:

- (a) Ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol and that domestic legislation throughout the State party, including in its devolved administrations, enables it to establish and exercise extraterritorial jurisdiction, without the dual criminality criterion, over all the offences covered by the Optional Protocol;*
- (b) Strengthen the National Referral Mechanism for identifying trafficked and exploited children, which is embedded in existing child protection procedures;*
- (c) Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including by establishing a clear*

¹ Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. Available at: <https://www.ohchr.org/en/countries/enacaregion/pages/gbindex.aspx>

obligation of non-prosecution, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;

(d) Operationalize the provision of a competent and statutory guardian during the criminal justice process;

(e) Revise its legislation to ensure that all children up to 18 years of age are protected from all types of offence covered by the Optional Protocol (paragraph 83).

The Department will also be aware of the 2016 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK compiled by GRETA.² Again for ease of reference the areas identified as requiring *immediate* action are set out below and should be properly addressed in the draft Strategy:

Recalling the recommendations made in its first report, GRETA once again urges the UK authorities to take steps to improve the identification and protection of child victims of trafficking, in accordance with the best interests of the child, and in particular to:

- take steps to address the problem of children going missing from local authority care, by providing suitable safe accommodation and adequately trained supervisors or foster parents;*
- improve the exchange of information on missing unaccompanied children between police forces and local authorities;*
- ensure that child victims who may be at risk of re-trafficking can be accommodated in another local authority area, to ensure effective protection from such risk;*
- train all professionals working with child victims of trafficking to recognise and respond appropriately to their individual needs and the best interests of the child;*
- ensure that possible victims of trafficking are assigned a legal guardian, as expeditiously as possible, to ensure that the best interests of the child are effectively protected (Article 10(4) of the Convention);*
- ensure full compliance with Article 10(3) of the Convention concerning age assessment and provision of special protection measures (paragraph 210).*

GRETA urges the UK authorities to:

- enshrine in the law applicable in England and Wales, Scotland and Northern Ireland the right to a recovery and reflection period as defined in Article 13 of the Convention;*
- ensure that all possible victims of trafficking, including children, are offered all the measures of protection and assistance stated in Article 12, paragraphs 1 and 2, of the Convention during the recovery and reflection period (paragraph 222).*

GRETA urges the UK authorities to adopt measures and to facilitate and guarantee access to compensation for victims of THB, and in particular to:

² GRETA (2016) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the UK compiled by the Group of Experts on Action against Trafficking in Human Beings. Strasbourg: Council of Europe.

- ensure that victims of trafficking are systematically informed in a language they understand of the available avenues to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation by ensuring their effective access to compensation;
- secure criminal assets as early as possible in trafficking investigations to make confiscation orders effective;
- instruct prosecutors to request reparation orders to the greatest possible extent, including in cases where the defendant has limited earning capacity and no assets;
- ensure that all victims of human trafficking are eligible for compensation from the Criminal Injuries Compensation Authority, regardless of the nature of the means used, and that the amount of compensation from the Northern Ireland Criminal Injuries Compensation Authority is not made dependent on the victim's co-operation with the authorities or prior convictions;
- remove the fee to initiate employment proceedings for victims of trafficking as well as the requirement to enter into mediation before initiating employment proceedings for victims of trafficking;
- ensure that victims of trafficking who are irregular migrants are not prevented from seeking unpaid salaries before employment tribunals by reason of their immigration status.

GRETA urges the UK authorities to ensure that the best interests of the child are effectively respected, protected and fulfilled, including through pre-removal risk and security assessments, in particular for unaccompanied children, by specialised bodies, working with relevant partners in countries of return; such assessments should also ensure effective enjoyment of the child's right to education and measures to secure adequate care or receipt by the family or appropriate care structures in countries of return (Article 16 (5) of the Convention) (paragraph 254).

Additional comments

NICCY notes that greater acknowledgement should be given to the legal status of potential victims of human trafficking and modern slavery and recognition of the specific processes applied to those subject to immigration control, including asylum and immigration processes and National Referral Mechanism (NRM) decision making pathways. Following on from this, we would highlight that the document should refer to the particular role of devolved Departments, including Justice and Health, and devolved statutory agencies in ensuring ongoing engagement with the Home Office in regard to the respective statutory duties of each body to safeguard and promote the welfare of children subject to immigration control who may also be victims and witnesses to trafficking and modern slavery.

We would welcome the draft Strategy narrative and priority areas paying more regard to child specific commitments and measures. For example, greater attention should be given to identifying vulnerable and at risk groups of children and putting in place responses to mitigate risk and enhance protections. In relation to outcomes for

children and young people, the draft Strategy should seek to report on the longer term and more qualitative outcomes that are achieved for children.

Strategic Priority One: Pursue

In relation to this strategic priority we welcome a commitment to effective learning and best practice and reference our advice to the current Review of arrangements to deliver justice in serious sexual offences cases being undertaken by Sir John Gillen.³ The advice recommends that in cases of sexual offences against children, a child centred justice model is developed in order to minimise the re-traumatisation of victims, support victims giving best evidence and improve fairness and justice for all involved in proceedings. We note that this will address a number of obligations on the UK Government which has recently ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) and highlight the merit of evaluating such a model for all cases of child exploitation and modern slavery. We would also welcome a clear commitment to ensuring that child victims are treated as victims and not criminals.

The reference to having an effective legislative framework states that legislative options will be considered over the two year period up to 2020 of the draft Strategy 'if required'. We must highlight our serious concern in relation to this as the necessary changes to legislation in regard to sexual offences and sexual exploitation have been set out previously by the UN Committee on the Rights of the Child⁴ and by the Independent Inquiry into Child Sexual Exploitation in Northern Ireland.⁵ NICCY again requests that the Department progresses these recommendations with urgency.

Reporting on measures within this priority should include monitoring increases in charges being brought and prosecution and conviction rates and should provide figures for cases where offences have been committed against children and young people. We would also welcome information on the number of cases involving child victims in which active disruption and investigation is in place and being monitored. In relation to information exchange and investigation across jurisdictions, we note the Strategy should address ensuring continuity of arrangements, including with EU agencies such as Europol and Eurojust, in the context of Brexit.

Strategic Priority Two: Protect

This priority should explicitly address supporting victims in their recovery from abuse and exploitation. It should also include measures which more effectively identify outcomes achieved for victims, for example, referrals into the National Referral Mechanism (NRM) should be accompanied by the outcome of NRM conclusive grounds decisions. In the transition to a reformed NRM, the draft Strategy should

³ NICCY (2018) Advice to the Review of arrangements to deliver justice in serious sexual offences cases. Available at: <https://www.niccy.org/publications/2018/september/07/review-of-sexual-offences-cases/>

⁴ Committee on the Rights of the Child (2014) Concluding observations on the UK report on the Optional Protocol on the Rights of the Child on the sale of children, child prostitution and child pornography.

⁵ K. Marshall (2014) Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry.

report on NRM outcomes by decision maker as we note concerns expressed by GRETA regarding EEA and non-EEA outcome disparities on this basis. Again in relation to outcomes, the document should report on outcomes for children who have access to a Guardian (not simply numbers of children), including immigration outcomes and outcomes for young people supported in aftercare.

The priority should set an ambitious target of seeking to ensure that children in Northern Ireland have access to a reformed NRM process embedded within safeguarding arrangements as has been committed to by the UK Government. Previously, Northern Ireland has sought to be innovative in providing the highest standards of protection for children at risk of trafficking and modern slavery and we would urge the Department and others to ensure the jurisdiction aims to progress this as soon as possible.

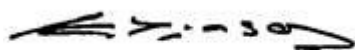
In relation to making sure appropriate accommodation options are available to meet the needs of child victims, we note with concern that over the two year period up to 2020 the only action or 'mechanism for delivery' given is analysis and keeping under review placement options. We recommend the draft Strategy provides better indication of how it will ensure a broader and more flexible range of accommodation options available, such as through the development of specialist fostering and extended fostering placements. We also express concern that HSCT/PSNI guidance is noted as still outstanding.

Strategic Priority Three: Prevent

We suggest that the public awareness campaign also reports on public confidence in identifying indicators of trafficking and modern slavery and reporting on these. We note with concern that no child specific areas are included within this priority and would highlight the importance of identifying and taking preventative action to protect vulnerable and at risk groups such as, Separated Children, Children in private fostering arrangements and Missing Children. We also note that action should be in place to prevent traffickers and perpetrators re-exploiting children as they reach 18 years of age, particularly where they may leave care and supported accommodation.

Please do not hesitate to contact my office if you would like to discuss this further.

Yours sincerely



Koulla Yiasouma
Commissioner