

Submission to the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) 13 November 2015

The Northern Ireland Commissioner for Children and Young People welcomed the opportunity to meet with GRETA on 29 October 2015 and supports GRETA's commitment to meeting with Commissioners and a wide range of statutory agencies and NGOs during its evaluation visits to the UK. This submission highlights many of the key themes of that meeting.

Introduction

The office of 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. In carrying out her duties, the Commissioner's paramount consideration is the rights of the child and 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 is a member of the British and Irish Network of Ombudsmen and Children's Commissioners and the UK Commissioners recently presented a joint report to the UN Committee on the Rights of The Child on the UK Government's implementation of children's rights.¹ The Commissioner is also a member of the European Network of Ombudspersons for Children (ENOC) and fully supports the recent ENOC statement supporting the rights and needs of "children on the move".²

Under articles 7(2)(3) of NICCY's legislation, the Commissioner has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and welfare of children and young people. It is with these duties in mind that we are providing a number of comments relating to child victims of trafficking and separated children in Northern Ireland.

¹ UKCCs (2015) Report of the UK Children's Commissioners to the UN Committee on the Rights of the Child on the Fifth Periodic Report of the UK.

² ENOC (2015) 19th General Assembly statement: <http://enoc.eu/?p=1254>

Northern Ireland context

In 2014 NICCY published commissioned research³ which identified that support, services and expertise provided to separated children, including those who may have been trafficked, in Northern Ireland can be variable and contingent on the skills and commitment of individual practitioners. Immigration and child protection systems which span across Northern Ireland and the UK, and are both critical to the child's safety and welfare, can operate separately and in isolation to each other. Northern Ireland faces a very real challenge about how to ensure a small, but highly vulnerable and often invisible, group of children have their most fundamental rights protected.

The Department of Justice (DoJ) have stated that in 2014, out of 38 recovered potential trafficking victims, eight (just under 20%) were children, the youngest being just three years old. Cases recorded included children vulnerable to trafficking due to being orphaned and/or sold by family members and children (who have often been in care) have been trafficked internally for sexual exploitation.⁴ As DoJ acknowledge, these figures represent data about National Referral Mechanism (NRM) referrals rather than full data about trafficking.

In 2012, GRETA noted that UK arrangements regarding trafficking were complex in regard to reserved and devolved powers across Northern Ireland, Scotland and Wales and identified a lack of harmonised legislation across all jurisdictions. GRETA also highlighted particular UK concerns, such as, the internal trafficking of children and numbers of children going missing from care. In relation to the reserved status of immigration matters, we note that this restricts NICCY's remit to address immigration and/or asylum aspects in cases of separated or trafficked children in Northern Ireland. The four UK Children's Commissioners work collaboratively to seek to address issues relating to reserved matters which impact upon the lives of children within their respective jurisdictions.

In regard to legislative safeguards, NICCY remains concerned that aspects of legislation in Northern Ireland, such as the Sexual Offences (Northern Ireland) Order 2008, do not afford equal protection to all children under 18 years and that this should be addressed. Within Northern Ireland government, the Department of Justice and the Department of Health, Social Services and Public Safety (DHSSPS) hold different responsibilities for trafficking and for the protection of child victims. NICCY has been concerned that work undertaken has not been progressed in a timely manner across the respective departments and that safeguards for children through the provision of guardians have not

³ R. Kohli, H. Connolly and H. Beckett (2014) *By Their Side and On Their Side: Reviewing the Evidence for Guardianship for separated Children in Northern Ireland*, Belfast: NICCY.

⁴ DoJ (2015) *Draft Northern Ireland Human Trafficking and Exploitation Strategy*.

been expedited at an appropriate pace by DHSSPS.⁵ In further considering challenges to integrating action against trafficking within Northern Ireland government processes, we note that while DoJ's Human Trafficking and Exploitation Strategy acknowledges clear evidence of the relationship between trafficking and child sexual exploitation, measures to address this are not fully embedded within the Strategy.

It is also important to recognise that Northern Ireland is the only part of the UK with a land border. NICCY remains concerned that the border can represent a significant challenge to child protection arrangements and that ease of movement across the border can place young people at greater risk of trafficking, exploitation and abuse. NICCY is of the view that government and statutory agencies in Northern Ireland and the Republic of Ireland must assess these concerns fully and ensure that there is proper monitoring, data gathering and sharing for the purposes of safeguarding in relation to this.

NICCY remains concerned that this complex picture may lead to gaps and weaknesses in protections for children and would welcome GRETA seeking assurances that these matters are being properly addressed.

Child victims

NICCY notes that government and statutory authorities should remain mindful that children may be subject to multiple forms of exploitation and abuse and can become vulnerable to trafficking at any point.

NICCY has expressed ongoing concern about children in Northern Ireland having access to therapeutic and mental health services. We note that the Health and Social Care Board have stated that additional counselling and therapeutic services have been commissioned for all looked after children, including separated and trafficked children and children who have experienced CSE and we highlight that GRETA may wish to seek further information regarding this.⁶

GRETA may also wish to confirm that consistent processes for receiving and assessing the needs of separated children are in place in all health and social care trusts. In relation to accommodation, NICCY is unclear if the regional residential provision remains a pilot scheme. NICCY notes with concern that the 2013 DHSSPS Minimum Standards for Children's Homes do not make specific reference to ensuring that the needs of separated children and children at risk of exploitation and trafficking are taken account of, as has been highlighted by the Children's Commissioner and the 2014 Independent Inquiry into

⁵ Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015, see clause 21.

⁶ DoJ (2015) Responses to consultation on the Human Trafficking and Exploitation Strategy 2015/16.

Child Sexual Exploitation in Northern Ireland.⁷ NICCY also understands that staff in the regional residential provision for separated children are not in a position to act as First Responders for the purposes of the NRM and would query the rationale for not addressing this issue. Further to this, we are concerned that there is a lack of specialist foster care for child victims of trafficking and separated children in Northern Ireland.

There have previously been concerns about processes in regard to age dispute in Northern Ireland and the availability of suitability trained social care staff to conduct 'Merton compliant' assessments. The UK Children's Commissioners has also expressed the view that paediatricians with appropriate experience should be involved in age assessment procedures and have recommended this in their 2015 report to the UN Committee on the Rights of the Child.⁸

In relation to child victims moving into adulthood, NICCY is concerned that transition arrangements should be effectively resourced and should properly support young people. In addition to this, government should ensure that the particular status of 16 and 17 year olds who are accommodated and 'looked after' by health and social care authorities but who are not subject to Care Orders do not experience a lower level of protection and support (either while under 18 years or in the transition to adult services) than that afforded to children for whom a Care Order has been granted. In relation to victims of sexual exploitation, the 2014 Independent Inquiry into Child Sexual Exploitation recommended that the definition of a 'vulnerable adult' should be amended by DHSSPS in order to provide further safeguards to victims moving into adulthood. GRETA may wish to consider how this has been progressed.

NICCY would welcome GRETA seeking assurances that the above matters are being appropriately addressed in NI.

Guardianship

The UK Children's Commissioner's have repeatedly called for statutory independent guardians to be in place for all unaccompanied and separated children, including victims of trafficking, throughout the UK in order to: safeguard their rights; effectively represent their best interests; and ensure their voice is heard and given due weight in all matters affecting them. NICCY warmly welcomed the provision of an independent guardian in clause 21 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. However, while it was understood that provisions of the clause

⁷ NICCY (2013) Response to DHSSPS consultation on Children's Homes Minimum Standards; K. Marshall (2014) Report of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland.

⁸ UKCCs (2015) Report of the UK Children's Commissioners to the UN Committee on the Rights of the Child on the Fifth Periodic Report of the UK.

would be in place by November 2015, NICCY is concerned that this provision has not commenced and may not be in place for a period of time.

DHSSPS are currently consulting on regulations for the training and qualifications of guardians and DoJ have stated that these will be laid by 31 March 2016.⁹ NICCY is disappointed that the draft regulations stipulate that the role of guardian and their supervisor can only be fulfilled by a qualified social worker. NICCY is of the view that the qualifications, knowledge, competencies and qualities of guardians should be more directly ascribed to those outlined by the UN Committee on the Rights of the Child in General Comment Number 6 and other guidance, such as the Core Standards of Guardianship developed by Goeman et al.¹⁰

In addition to this, it is currently unclear if guidance will be produced to ensure that the role and tasks of guardians are outlined in detail for children, guardians and also for the full range of professionals and agencies that are involved in the lives of child victims and separated children and who will be required to work with guardians and children to ensure that their rights and best interests are safeguarded. As well as being underpinned by such guidance, the guardianship provision should also be subject to monitoring and evaluation, including independent oversight, and an accessible child friendly complaints system must be in place.

NICCY would welcome GRETA seeking clarification as to when separated children in Northern Ireland, including those who may be victims of trafficking, will have access to independent Guardians.

Missing children

As recognised by GRETA in 2012, the issue of child victims and children vulnerable to exploitation going missing from care has been of ongoing concern in the UK. NICCY wishes to highlight serious concern about 2013-14 figures which state that in Northern Ireland three of six separated children went missing (one had been assessed as an adult).¹¹ Also in 2013, an inspection of Larne House short term holding facility identified that one young person identified as an adult but later assessed as child also went

⁹ DoJ 2015 Responses to consultation on the Human Trafficking and Exploitation Strategy 2015/16.

¹⁰ CRC (2005) General Comment Number 6: Treatment of unaccompanied and separated children outside their country of origin; M. Goeman et al (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities, Netherlands: Defense for Children; EUFRA and EU (2014) Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, EUAFR: Belgium; EUAFR (2015) Guardianship systems for children deprived of parental care in the European Union: with a particular focus on their role in responding to trafficking, Italy: EUAFR.

¹¹ HSCB (2014) Overview Delegated Statutory Functions Report April 2013 - March 2014.

missing.¹² NICCY is deeply concerned at the proportion of those who have been identified as separated children who have subsequently gone missing. GRETA may find it helpful to request current figures and an update on measures that have been taken to address children in Northern Ireland going missing and being recovered. In the UK context, NICCY notes that the 2014 Review of the NRM does not identify significant evidence that the situation regarding children going missing has improved.¹³

In relation to the revised 2014 Health and Social Care Board and Police Service of NI Runaway and Missing from Care and Home Protocol, NICCY has stated that the guidance must more effectively highlight that indicators of trafficking (and the vulnerabilities of separated children and those at risk of trafficking) should inform responses to children who go missing, including risk assessments for children and the management of their return.

NICCY would welcome GRETA further assessing the safeguards that are in place in Northern Ireland to protect potential child victims of trafficking who are at risk of going missing.

NRM

NICCY notes that any changes to the NRM following the 2014 Review commissioned by the Home Office must ensure that all processes and decisions regarding children are taken within the context of safeguarding. Processes which impact upon separated children and child victims including those associated with the NRM and immigration and asylum procedures should be in keeping with the principles and practices of the child protection system. This should extend to cases where the trafficking and exploitation of a child is subject to criminal investigation and/or prosecution. In relation to the NRM, all forms of exploitation should be addressed through the mechanism and those involved in assessment and decision making should have appropriate safeguarding expertise.

GRETA and other commentators have previously noted the differential proportion of positive decisions made by UKBA/UKVI and the UKHTC respectively. GRETA has also highlighted concern that NGO reports to the NRM do not appear to be given equal weight as those from statutory authorities and NICCY looks forward to GRETA's updated assessment of this, particularly regarding any correlation between legal and immigration status, asylum claim and trafficking assessments.

NICCY welcomes the proposal outlined in the 2014 Review of the NRM to consider slavery safeguarding leads as first responders and multidisciplinary panels as decision makers regarding reasonable and conclusive grounds decisions. However, we note the

¹² HMCIP (2013) Report of an announced inspection at Larne House Short Term Holding Facility.

¹³ J. Oppenheim (2014) Review of the National Referral Mechanism for victims of human trafficking, London: Home Office.

importance of ensuring there is appropriate expertise in such panels, as highlighted above, and that the principle of ensuring no conflict of interest must be clearly established. In 2012 GRETA identified that Health and Social Care Trusts should act as the Competent Authority in cases involving child victims. NICCY would again note the importance of ensuring the Competent Authority has sufficient multidisciplinary expertise regarding child trafficking and that robust safeguards are in place to mitigate any conflict of interest, including that of being required to resource the accommodation and support of child victims. NICCY also draws attention to the importance of ensuring that social care and other professionals, such as youth justice and the police, have a high level of awareness of indicators of trafficking and understand the relevance of referring to the NRM, including when children are already known to services or are subject to child protection or child in need measures.

NICCY would welcome GRETA seeking assurances that changes to the NRM ensure that child protection concerns and expertise are central to decision making processes regarding children.

Data

GRETA has previously drawn attention to the need for data collection and dissemination, including disaggregated data by sex, age, type of exploitation, country of origin and destination, to be improved. NICCY remains concerned about the lack of uniformity in data collection across different agencies and the robustness of data provided regarding separated children and child victims of trafficking in Northern Ireland. Northern Ireland specific data should be made available. Further to this, the UK Children's Commissioners have recommended that data should also include information regarding the number of young people claiming to be children whose age is disputed.

NICCY would welcome GRETA raising concerns about the collection and provision of disaggregated data.

Other issues

In 2012 GRETA highlighted the importance of government and statutory agencies actively engaging with the UK Children's Commissioners, equality and rights bodies and NGOs. NICCY would note that this should continue to be raised as a priority for government in its anti-trafficking work.

The UK Children's Commissioners in their 2015 report to the UN Committee in the Rights of the Child have recommended that the UK should ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse which was signed in 2008. NICCY would welcome GRETA raising this directly with the UK Government.