



Law Centre (NI)

Draft Northern Ireland Human Trafficking and Exploitation Strategy

Law Centre (NI) response

August 2015

About Law Centre (NI)

Law Centre (NI) works to promote social justice and provides specialist legal services to advice organisations and disadvantaged individuals from our two regional offices in Northern Ireland. The Law Centre provides advice, casework, training, information and policy services to our member organisations. We are the main advisers on trafficking law in Northern Ireland; we chair the Racial Equality Forum's Immigration Sub Group; we are members of the EU Civil Society Platform Against Trafficking in Human Beings, the Department of Justice NGO Engagement Group, the NI Strategic Migration Partnership, the Refugee and Asylum Forum and the Home Office Asylum Stakeholders Forum.

The Law Centre has been representing suspected victims of trafficking for many years. In September 2013 the Law Centre received funding from Comic Relief to establish a project, the Anti-trafficking Young People Project, which is dedicated to representing children and young people who are, or are suspected to be, victims of human trafficking in Northern Ireland and who have therefore been referred into the National Referral Mechanism (NRM), the system in place for identifying and supporting suspected victims of trafficking in the UK. Since it was established, the project has represented 17 young people through the trafficking process, 10 of whom are also seeking asylum in the UK, 12 of whom are subject to immigration control the other 5 are EEA citizens. The children and young people come from Europe, Asia and Africa. Very few speak English; none have English as a first language.

This response

This response is organised in two parts: Part A contains our preliminary comments whereas Part B contains our responses to the consultation questions where relevant to our work.

PART A

Preliminary comments

We welcome the opportunity to respond to this consultation.

a) Action Plans and Interim Reports

We find the Department of Justice annual Human Trafficking Action plans and the interim reports on these plans very helpful. We see these reports as a valid evaluation of progress and a way in which to measure outcomes. The Law Centre, as a member of the Department of Justice NGO Engagement Group, values the opportunity to feed into both documents and congratulates the Department for the progress it has made.

b) Ministerial Foreword

The EU Strategy is clear that primary responsibility for addressing human trafficking lies with Member States.¹ Clearly, things are a little more complex in the United Kingdom given the different jurisdictions and devolution. We think it might be useful if the Ministerial Foreword includes a statement about the Department's leadership and responsibilities in respect of

¹ http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf, page 5

addressing human trafficking. We believe that the Department of Justice should command the *fullest possible remit* for combatting trafficking, not least because Northern Ireland has responsibility for human rights, criminal justice and employment law. For example, the Department of Justice may wish to express its legitimate interest in immigration enforcement potentially where it intersects with potential victims of trafficking. The Department is very clear about the need to protect and support victims. It should not countenance any possibility of a two-tier system arising in Northern Ireland whereby the victims' experience of protection and support depends on whether they are encountered by NI agencies (e.g. PSNI, DEL inspectors,) or by Home Office immigration enforcement.

c) England / NI policy

There is currently a disconnect between Home Office policy in England and Northern Ireland that needs addressing. New Home Office guidance is clear that victims of forced labour (who are not victims of trafficking) can be referred into the National Referral Mechanism in England.² We welcome this development as we believe that all victims of modern slavery should be entitled to support and assistance.

We understand that the Department of Justice is looking at this issue in Northern Ireland. We would urge the Department to bring Northern Ireland policy in line with the Home Office guidance. This will ensure a much clearer pathway for victims of forced labour and will remove the current anomaly whereby a victim of forced labour in Northern Ireland may be entitled to apply for Discretionary Leave to Remain (thereby gaining access to social security and the labour market) and yet does not have a clear entitlement to assistance under the National Referral Mechanism.³

d) A long-term action: longitudinal research?

While much of the Strategy rightly focusses on immediate / short-term actions, we think some consideration of long-term actions / responses would also be useful. For example, an initiative that would help increase our collective understanding of human trafficking in Northern Ireland would be if the Department of Justice were to commission longitudinal research that looks at the experiences of victims of trafficking post NRM. This research could examine the long-term effects of trafficking and the (re)integration of victims who continue to reside in Northern Ireland as well as those who decide to return home to their country of origin. This would provide a very interesting long-term perspective on the availability and effectiveness of support provisions to victims of trafficking.

² Home Office, 'Victims of Modern Slavery: Competent Authority Guidance' (July 2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450842/Competent_authority_guidance_v2_0_ext.pdf

³ We are mindful that, in practice, victims of forced labour in Northern Ireland have been able to avail of support and assistance (which is to be welcomed) . We hope that this can now be embedded into policy.

PART B

Question 2: The proposed overall aim of the draft strategy is: “To equip NI to drive out human trafficking, slavery and forced labour”. In your view, is the strategic aim appropriate? What, if any, strategic aim would you propose?

The phrase “to drive out” suggests that traffickers and their victims can move to another jurisdiction. We believe that the NI strategy must reflect the 2012 – 2016 EU Strategy towards the Eradication of Trafficking in Human Beings⁴. The first aim of this strategy must also be to eradicate human trafficking wherever it is throughout Northern Ireland in cooperation with the rest of UK, the Republic of Ireland and EU Member States.

- Law Centre therefore recommends the strategic aim is “*To equip Northern Ireland to eradicate human trafficking, slavery and forced slavery*”.

Question 3: Four strategic priorities have been proposed which underpin the strategic aim. These are: pursue; protect and support; prevent; and partnership. In your view are these the right strategic priorities? What, if any, alternatives would you propose?

The four strategic priorities all make good sense, however, we would ask Department of Justice to consider the EU strategy which has five strategic priorities, the fifth being:

*Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings*⁵

Compiling information and ensuring access to reliable data is an essential aspect to evaluating and monitoring services/responses. The OCTF victim profile report is a good example of making data available as are the reports compiled by the UK Human Trafficking Centre /National Crime Agency. Unfortunately, Northern Ireland is hampered in its understanding of human trafficking because of the Home Office’s reluctance to provide immigration-related data. While of course, modern slavery does not only affect migrants, there is an overlap between exploitation and immigration at times. Thus, the paucity of immigration data is an ongoing cause of concern and one that the Law Centre has raised with GRETA⁶, OFMDFM, NISMP and the Home Office.

- Law Centre recommends that Department of Justice consider introducing a fifth strategic aim relating to collecting data. In the alternative, Department of Justice could consider how to achieve this aim elsewhere in the strategy e.g. embed it into strategic priority 4 (partnership).

STRATEGIC PRIORITY 1: PURSUE

⁴ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0286>

⁵ http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf page 5

⁶ <http://www.lawcentreni.org/Publications/Policy-Responses/GRETA-UK-evaluation-June-2015.pdf>

Question 4(a): In your opinion are these proposed objectives appropriate? Are there any additional objectives that in your opinion should also be included?

- In order to ensure that Objective No.4 of Strategic Priority 1 is achieved (i.e. *effective investigations and prosecutions* occur), we recommend that training of the judiciary is inserted as an identified action.
- Action 2 contained within Objective No. 4 is to “*Develop Memoranda of Understanding with An Garda Siochana and with the Irish National Employment Rights Authority (NERA)*”, with the identified owner being the GLA. We recommend that the PSNI, Department of Justice and the DELNI should also be involved in developing the Memoranda of Understanding with An Garda Siochana and NERA so as to ensure effective investigations and prosecutions.
- In relation to Objective No. 7 (“*pursue criminal finances of traffickers and enslavers*”), we wonder if it would be feasible for Department of Justice to commit to reinvesting all confiscated criminal assets into anti-trafficking efforts and victim support. This would be a symbolic gesture in which some victims might take solace.

STRATEGIC PRIORITY 2: PROTECT AND SUPPORT

Question 5(b): In your opinion are these proposed actions appropriate? Are there any additional actions that in your opinion should also be included?

- Objective No. 1. We suggest that “*improve victim identification and support*” should include an action on providing “*training for appropriate front line staff*”.
- Specifically, we recommend that there is mention to training of Tascorp staff in Larne House Short Term Holding Centre and prison service staff. As we outlined above, we think Department of Justice should be clear about its responsibility for trafficking matters, even when they occur in institutions – such as Larne House Short-Term Holding Facility – where Department of Justice has not traditionally played any role.
- Also in relation to Objective No. 1, we suggest that the ‘Projected Outcomes’ are amended to be clear that victims of exploitation should not face prosecution.
- We recommend that Objective No. 2 clearly links to the DHSSPS adult safeguarding policy “*Adult Safeguarding: Prevention and Protection in Partnership*,”⁷ which is clear that an adult victim of trafficking is a person at risk of harm. One possibility is to include the following action in this section: “*ensuring the delivery of services in accordance with the DHSSPS adult safeguarding policy for Northern Ireland ‘Adult Safeguarding: Prevention and Protection in Partnership’*”.
- In relation to Objective No. 3, the Action needs to be amended to be clear that victims of trafficking can avail of the discretionary leave scheme if their personal circumstances warrant it. This is very important: at the moment, the Strategy only

⁷ This triggers an Adult Protection Response from the HSC Trust and the PSNI with the appointment of a Designated Adult Protection Officer responsible for ensuring that “*connections are made with interagency mechanisms*” which in the case of victims of trafficking will include the statutory agencies involved in the NRM process. See: <http://www.dhsspsni.gov.uk/adult-safeguarding-policy.pdf>

seeks to support victims who are assisting with criminal investigations. The European Trafficking Convention (Article 14)⁸ enshrines the principle that victims of trafficking can be granted a Residence Permit if the competent authority considers that their stay is necessary either for the purpose of a *criminal investigation* or owing to the *personal circumstances* of the victim. This needs to be clearly set out in the Strategy.

- In relation to Objective No.5: “*Provide protection and support services to children*”, we suggest that an additional Projected Outcome is included: “*compliance with requirements under the EU Directive and the Human Trafficking & Exploitation (Criminal Justice & Support for Victims) Act (NI) 2015*”.
- In relation to Objective No. 6, the Projected Outcome should clarify that victims *can avail of legal advice* as well as legal representation. The Strategy also commits to making Legal aid available to trafficking or slavery victims; it would be useful to clarify which areas of law this applies to.
- In relation to Objective No. 8: “*Reinforce capacity to respond to major human trafficking or slavery like incidents*”, we welcome the Projected Outcome: “*gaps identified during previous major incidents are addressed*”. We recommend that the PPS is added as an agency with ownership of this outcome to ensure that lessons learned from successful and unsuccessful prosecutions are captured and feed into the discussion so as to prevent and reduce the risk of human trafficking and exploitation in NI.

STRATEGIC PRIORITY 3: PROTECT AND SUPPORT

Question 6(b): In your opinion are these proposed actions appropriate? Are there any additional actions that in your opinion should also be included?

- In relation to Objective No. 3, we suggest that Department of Justice includes an action point about liaising with the judiciary, PPS and Criminal Cases Review Commission to ensure that victims of trafficking are not prosecuted for crimes committed under duress. We believe it would be a very useful exercise to review prosecutions (e.g. since implementation of NRM in 2009) to ensure that any wrongful convictions of victims of trafficking are identified and referred to the Criminal Cases Review Commission for investigation.

STRATEGIC PRIORITY 4: PARTNERSHIP

Question 7(b): In your opinion are these proposed actions appropriate? Are there any additional actions in your opinion should also be included?

- Objective No.3 is: “*Appropriate information sharing*”. We recommend that a projected outcome of “*increased prosecutions*” is included as an indication of partnership working, identification of best practice and lessons learned. Indeed, we

⁸ Council of Europe Convention on Action against Trafficking in Human Beings 2005. Accessible here: <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG>

suggest that “*sharing best practice*” and “*increased prosecutions*” are also inserted into Objective 4 and 5.

- We also recommend that “*co-ordinating employment enforcement agencies*” is inserted as an identified action and that ownership should rest with DEL.
- We welcome the identified action in Objective 4: to “*conduct a biennial analysis of victim referrals, on a cross-border basis, to identify key learning points and common themes*”. We propose the OCTF Victim Profile paper as a very useful report; it would be useful for information and comparative purposes if this publication could be issued regularly and if there was a similar publication covering the Republic of Ireland.⁹
- Also in relation to Objective No. 5, we suggest that the first action “*ensure that NI legislation surrounding human trafficking and slavery is consistent with legislation across the UK, where appropriate*” is amended to ensure that protections are equally available for victims of trafficking and victims of forced labour (see our preliminary comments).
- An identified action in Objective No 6 is to “*inform the Anti-Slavery Commissioner’s strategic plan*”. We recommend that this action should read” to *inform and influence the Anti-Slavery Commissioner’s strategic plan so as to ensure specific Northern Ireland perspectives are embedded*”.

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⁹ <http://www.octf.gov.uk/Publications/Human-Trafficking/Strategic-Profile-Potential-Victims-of-Human-Traff>