



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Northern Ireland Human Rights Commission
Submission to the Independent Inquiry into Child Sexual
Exploitation in Northern Ireland**

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1. Introduction

- 1.1.** The Northern Ireland Human Rights Commission (the Commission) is a statutory public body established in 1999 to promote and protect human rights. In accordance with Section 69(1) of the Northern Ireland Act (1998) the Commission reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI).
- 1.2.** The Commission is one of the three A status National Human Rights Institutions in the UK.¹ In accordance with the Paris Principles² the Commission reviews the adequacy and effectiveness of measures undertaken by the UK Government to promote and protect human rights within NI.
- 1.3.** In compliance with its duties the Commission provides submissions to UN Human Rights Treaty Bodies, including the UN Committee on the Rights of the Child (UNCRC Committee) and the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee). In this regard the Commission notes that the UNCRC Committee will examine the UK's compliance with the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) in May 2014.³ In advance of this examination the Commission provided a submission to the Committee in July 2013 raising a number of concerns with respect to child sexual exploitation in Northern Ireland.⁴
- 1.4.** The Commission's submission addresses five areas of concern in relation to the prevention, identification, disruption and prosecution of child sexual exploitation in Northern Ireland. First, the requirement on the prosecution to disprove reasonable belief regarding the age of a child victim between the ages of 13 and 18. Second, the requirement to disprove reasonable belief with respect to the offence of sexual grooming. Third, the limited operation of the National Crime Agency in Northern Ireland. Fourth,

¹ With the Equality and Human Rights Commission and the Scottish Human Rights Commission.

² <http://www2.ohchr.org/english/law/parisprinciples.htm>.

³ The Committee will also examine the UK's Compliance with the UN Convention on the Rights of the Child (UNCRC) in the coming years and is currently awaiting submission of the UK's State Party Report.

⁴ NIHRC, *Submission regarding the List of Issues concerning the Initial Report of the United Kingdom of Great Britain and Northern Ireland on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, July 2013: [http://www.nihrc.org/documents/treaty-and-international-work/2013/List%20of%20Issues%20Opt%20Prot%20CRC%20sale%20of%20children%20\(July%202013\).pdf](http://www.nihrc.org/documents/treaty-and-international-work/2013/List%20of%20Issues%20Opt%20Prot%20CRC%20sale%20of%20children%20(July%202013).pdf). The Commission has also raised similar concerns with the CEDAW Committee and the Westminster Joint Committee on Human Rights. NIHRC, *Parallel Report on the 7th Periodic Report of the United Kingdom of Great Britain and Northern Ireland under the Convention on the Elimination of all Forms of Discrimination against Women*, June 2013 [http://www.nihrc.org/documents/treaty-and-international-work/2013/NIHRC%20parallel%20report%20to%20CEDAW%20\(June%202013\).pdf](http://www.nihrc.org/documents/treaty-and-international-work/2013/NIHRC%20parallel%20report%20to%20CEDAW%20(June%202013).pdf)

private fostering arrangements, and finally, the protection of child victims of trafficking in Northern Ireland.

2. Requirement on prosecution to disprove reasonable belief regarding the age of a child victim between the ages of 13 and 18

2.1. The Commission notes that for the purposes of the UNCRC “a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”⁵

2.2. The Commission recalls that in its 2013 Concluding Observations the CEDAW Committee noted that in NI it is an offence to pay for the sexual services of a child under 18 years of age but expressed concern that “in the case of a child over the age of 13 years and under the age of 18 years, the prosecution is required to prove that the purchaser did not reasonably believe the child to be 18 years old or more.”⁶

2.3. The Commission is concerned that inadequate protection currently exists in legislation in NI with regard to the sexual exploitation of children between the ages of 13 and 18 through prostitution, pornography, and the payment for sexual services of such children.

2.4. It is an offence in NI to intentionally:

- pay for the sexual services of a child under 13 years old;⁷ or
- pay for the sexual services of a child under 18 years old where the purchaser did not reasonably believe the child to be 18 years or over;⁸

- cause or incite a child under 13 years old to become a prostitute or to be involved in pornography;⁹ or
- cause or incite a child under 18 years old to become a prostitute or to be involved in pornography where the perpetrator did not reasonably believe the child to be 18 years or over;¹⁰

⁵ UNCRC, Article 1.

⁶ CEDAW Committee, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013, para 40.

⁷ Sexual Offences (Northern Ireland) Order 2008, article 37.

⁸ Sexual Offences (Northern Ireland) Order 2008, article 37.

⁹ Sexual Offences (Northern Ireland) Order 2008, article 38.

¹⁰ Sexual Offences (Northern Ireland) Order 2008, article 38.

- control the activities of a child under 13 years old relating to that child's prostitution or involvement in pornography;¹¹ or
- control the activities of a child under 18 years old relating to that child's prostitution or involvement in pornography where the perpetrator did not reasonably believe the child to be 18 years or over;¹²
- arrange or facilitate the prostitution or involvement in pornography of a child under 13 years old;¹³ or
- arrange or facilitate the prostitution or involvement in pornography of a child under 18 years old where the perpetrator did not reasonably believe the child to be 18 years or over.¹⁴

2.5. The Commission emphasises that with respect to each of the offences listed in paragraph 2.4, where the victim of the offence is between 13 and 18 years of age it will be for the prosecution to prove that the defendant did not reasonably believe that the child victim was over 18.¹⁵

2.6. The Commission notes that the UNCRC Committee in examining the USA's compliance with the OPSC expressed "concern that reasonable belief that the victim was at least 18 years old can be accepted as legal defence..." and urged the State party to "Review its legislation and ensure that reasonable belief that the victim was at least 18 years old can no longer be accepted as legal defence..."¹⁶

2.7. The Commission advises that the Inquiry should recommend that the law in NI should be amended in order to provide effective protection for children between the ages of 13 and 18 from prostitution, pornography and the payment for sexual services of such children.

3. Offence of sexual grooming

3.1. The Commission notes that the Sexual Offences (Northern Ireland) Order 2008 establishes the offence of sexual grooming. This offence covers situations where an adult establishes contact with a child and gains the

¹¹ Sexual Offences (Northern Ireland) Order 2008, article 39.

¹² Sexual Offences (Northern Ireland) Order 2008, article 39.

¹³ Sexual Offences (Northern Ireland) Order 2008, article 40.

¹⁴ Sexual Offences (Northern Ireland) Order 2008, article 40.

¹⁵ See Explanatory Memorandum to the Sexual Offences (Northern Ireland) Order 2008, article 37, 38, 39, 40.

¹⁶ UNCRC Committee, Concluding observations on the second periodic report of the United States of America, adopted by the Committee at its sixty-second session (14 January-1 February 2013), 25 January 2013, paras 31 and 32.

child's trust and confidence with the intent of arranging to meet the child for the purpose of committing a "relevant offence".¹⁷ However, this offence will only have been committed if the child is under 16 *and* the perpetrator "does not reasonably believe" the child to be 16 or over.¹⁸

3.2. The Commission advises that the Inquiry should recommend an amendment to this legislation in order to provide effective protection for the rights of children in Northern Ireland.

3.3. The Commission further notes that with respect to Australia the UNCRC Committee expressed concern "that some children between the ages of 16 and 18 within the State party are not fully protected against the offences under the Optional Protocol" and "that the criminalization of some relevant offences under the Optional Protocol is linked to the age of sexual consent, which is 16 in most jurisdictions." The Committee urged the State party to review the provisions of its national legislation and ensure that they are in full compliance with the provisions of the Optional Protocol and in particular "define and criminalize all offences under the Optional Protocol so that all children under the age of 18 are fully protected."¹⁹

3.4. Recognising that the age of consent in NI is 16 the Commission advises that the Inquiry should consider the recommendations of the UNCRC Committee in relation to children between the ages of 16 and 18.

4. National Crime Agency

4.1. Pursuant to the Crime and Courts Act 2013 the National Crime Agency (NCA) has been established for the United Kingdom.²⁰ The Commission notes that the Child Exploitation and Online Protection Centre (CEOP) has been incorporated as one of four operational commands of the NCA.²¹

4.2. However, due to the absence of agreement to a Legislative Consent Motion the NCA's operation in Northern Ireland is limited.²² The Commission

¹⁷ Sexual Offences (Northern Ireland) Order 2008, article 22.

¹⁸ Sexual Offences (Northern Ireland) Order 2008, article 22.

¹⁹ UNCRC Committee, Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Concluding observations: Australia, 24 September 2012, paras. 24 and 25.

²⁰ Crime and Courts Act 2013, Part 1.

²¹ <http://www.ceop.police.uk/safety-centre/>

²² See for example, House of Commons, Hansard, 26 February 2014, Column 243.

recalls that in 2013 the Minister of Justice in Northern Ireland (Minister Ford) stated that

[his] request for a Legislative Consent Motion (LCM) [for the Crime and Courts Bill] was turned down by the [NI] Executive... In the absence of an LCM the NCA will only have powers to operate in the non-devolved sphere within this jurisdiction... Unless steps are taken to address the gap left by the inability of the NCA to operate in the organised crime arena the law enforcement effort here will be significantly diminished in a number of respects.²³

4.3. In relation to the issue of child exploitation Minister Ford stated that “the reality is that the specialist expertise for the United Kingdom exists in Child Exploitation and Online Protection Centre at the moment, which is becoming part of the NCA, and which, in the absence of agreement in [the NI Assembly], will not be able to operate in the devolved sphere in Northern Ireland.”²⁴ The Commission notes that the Police Service of Northern Ireland (PSNI) recently advised the Committee for Justice of the Northern Ireland Assembly that “after five months without the National Crime Agency, we can start to see where cracks are opening up... we are missing out on the operational assistance that the NCA can bring.”²⁵ The Minister of Justice has reiterated that “the reality is that the longer the impasse, the more the impact. The beneficiaries will simply be organised crime groups.”²⁶

4.4. The Commission further notes that the UNCRC Committee has requested the UK to “provide detailed information on the operation of the

²³ See Minister of Justice response to AQW 19056/11-15. 29/01/2013. See also, BBC News, *Blocking new crime agency ‘is mistake’ says David Ford*, 28 January 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-21236151>; Minister of Justice response to AQW 22996/11-15 13/05/2013; Minister of Justice response to AQW 19072/11-15. 06/03/2013.

²⁴ Hansard report, Northern Ireland Assembly, 24 September 2013, Volume 87, No. 6, p. 34.

²⁵ Hansard report, Northern Ireland Assembly, Committee for Justice, Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: Police Service of Northern Ireland, 20 February 2014, p. 9. See also, *PSNI statement on National Crime Agency*, 14 May 2013, available at: http://www.psni.police.uk/general_psni_statement_on_national_crime_agency_14_05_13. The Chief Constable of the PSNI has raised concerns that the NCA will not be fully operational in Northern Ireland and describing “Northern Ireland as ‘poor cousins to the rest of GB in terms of what the NCA can do.’” BBC News, *Crime agency block ‘will hamper policing’*, 14 May 2013, available at: <http://www.bbc.co.uk/news/uk-northern-ireland-22524011>.

²⁶ Hansard report, Northern Ireland Assembly, 11 March 2014, Volume 93, No. 2, p. 35.

CEOP in Northern Ireland, particularly in relation to the recent concerns regarding the NCA's ability to operate fully in Northern Ireland."²⁷

4.5. In light of the NCA and CEOP's role in the protection of children from exploitation and trafficking, the Commission advises that the Inquiry should give full consideration to the adequacy of protections of children and the risk of inadequate policing within the jurisdiction and make recommendations on this matter.

5. Private Fostering Arrangements

5.1. The Commission notes that the Child Exploitation and Online Protection Centre (CEOP) has raised concerns that private fostering arrangements²⁸ in the UK "may be abused by traffickers"²⁹ and that "the system has the potential for abuse."³⁰ CEOP noted that "many trafficked children are exploited in unregistered private arrangements in the UK. Once in the UK and in the venue of exploitation, which often include private residences, detection of the child can be problematic."³¹

5.2. The Commission advises that the Inquiry should consider making recommendations to enhance protections of children in private fostering arrangements, including addressing loopholes in legislation,³² increasing data collection³³ and improving inter-agency cooperation.³⁴

²⁷ UN Committee on the Rights of the Child, List of Issues in relation to the initial report of the United Kingdom submitted under the Optional Protocol on the sale of children, child prostitution and child pornography, 30 October 2013, para 4.

²⁸ Provisions regarding private arrangements for fostering children are outlined in Articles 106-112 of the Children (Northern Ireland) Order 1995 and the Children (Private Arrangements for Fostering) Regulations (Northern Ireland) 1996.

²⁹ Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, p. 36.

³⁰ Child Exploitation and Online Protection Centre, *Hidden Children: the Trafficking and Exploitation of Children within the Home*, 2011, p. 6.

³¹ Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, p. 36. See also, ECPAT UK(End Child Prostitution, Child Pornography and Trafficking of Children), *Understanding Child Trafficking and Private Fostering*, 2011, available at: http://www.ecpat.org.uk/sites/default/files/understanding_papers/understanding_private_fostering.pdf

³² Child Exploitation and Online Protection Centre, *Hidden Children: the Trafficking and Exploitation of Children within the Home*, 2011, p. 8.

³³ Child Exploitation and Online Protection Centre, *Hidden Children: the Trafficking and Exploitation of Children within the Home*, 2011, pp.8-9.

³⁴ Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, p. 36.

6. Child Victims of Trafficking

6.1. The Commission notes that the UNCRC Committee has stated that unaccompanied or separated children in a country outside their country of origin, which includes child victims of trafficking, “are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.”³⁵ The Government has recognized that “trafficked children are likely to have experienced neglect and sexual abuse as well as emotional, psychological and physical abuse”³⁶ and that there “is a tendency for unaccompanied children and those who may also have been trafficked, to go missing (possibly back into the care of the traffickers) before being properly identified as victims of trafficking.”³⁷

6.2. International standards call on States to appoint a guardian or adviser to act in the best interests of child victims of trafficking.³⁸ The UNCRC Committee has requested that the UK provide information on “measures to develop holistic and victim-centered methods to identify children, such as unaccompanied children entering the State party, who are, or who are at risk of becoming, victims of child trafficking, sale, prostitution and pornography” and “measures taken to ensure that child victims of offences under the Optional Protocol, including victims of trafficking, are provided with appropriate assistance for their full social reintegration, physical, psychological and psychosocial recovery, as well as compensation.”³⁹

6.3. The Commission notes the joint guidance issued by the DHSSPS and the PSNI concerning the ‘Working arrangements for the welfare and

³⁵ UN Committee on the Rights of the Child, General Comment 6: *Treatment of unaccompanied and separated children outside their country of origin*, 2005, para 50.

³⁶ DHSSPS and PSNI, ‘Working arrangements for the welfare and safeguarding of child victim’s of human trafficking’ (February 2011), p. 4.

³⁷ DHSSPS and PSNI, ‘Working arrangements for the welfare and safeguarding of child victim’s of human trafficking’ (February 2011), p. 14. See also, Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, pp. 21-22. “It is clear from the numbers of trafficked children who go missing from local authority provided care that this remains a significant child protection issue. It is likely that, given the levels of grooming and coercion, children go missing from care homes, back into the hands of their traffickers and re-entering a situation of exploitation.”

³⁸ Council of Europe Convention on Action against Trafficking in Human Beings, Article 10(4); EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Article 16; UN Committee on the Rights of the Child, General Comment 6: *Treatment of unaccompanied and separated children outside their country of origin*, 2005, para 33. See also, Child Exploitation and Online Protection Centre, *Strategic Threat Assessment Child Trafficking in the UK*, 2010, pp. 21-22.

³⁹ UN Committee on the Rights of the Child, List of Issues in relation to the initial report of the United Kingdom submitted under the Optional Protocol on the sale of children, child prostitution and child pornography, 30 October 2013, paras 10 and 11.

safeguarding of child victims of human trafficking' published in 2011 which states that child victim's of trafficking will be allocated a social worker who will liaise with the child regarding health, education and legal needs.⁴⁰

6.4. The Commission also notes that in 2012, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) stated that:

There is no system of legal guardianship for trafficked children at the UK level. According to the Government, existing measures of having a State-allocated social worker and advocate are adequate. However, a social worker or a voluntary advocate fall short of providing a legal guardian who can act independently with authority and uphold the child's best interests. A system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing.⁴¹

6.5. In a 2008 report to the UNCRC Committee, the four UK Children's Commissioners called for a formal guardianship scheme for asylum seeking children, noting that 'many asylum seeking children are not allocated their own social worker'.⁴²

6.6. The Commission advises that the Inquiry should consider recommending the establishment of a guardian or adviser for all child victims of trafficking (and potentially all separated children⁴³) in order to enhance the protection of these vulnerable children from sexual exploitation.

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⁴⁰ DHSSPS and PSNI, 'Working arrangements for the welfare and safeguarding of child victim's of human trafficking' (February 2011), p 11-13.

⁴¹ GRETA Report on the UK (12 September 2012), para 245.

⁴² UK Children's Commissioners Report to the UNCRC Committee (June 2008), para 157.

⁴³ See NICCY, *By their side and on their side: Reviewing the evidence for guardianship for separated children in Northern Ireland*, February 2014.