

Justice Committee

Human Trafficking and Exploitation (Scotland) Bill

Written submission from Victim Support Scotland

Victim Support Scotland is the lead voluntary organisation in Scotland helping people affected by crime. We provide emotional support, practical help and essential information to victims, witnesses and others affected by crime in every Scottish local authority area, and in every Sheriff and High Court in the land. The service is free, confidential and is provided by volunteers. With the interests of victims and witnesses in mind, Victim Support Scotland welcomes the opportunity to provide our views to the Committee on the Human Trafficking and Exploitation (Scotland) Bill.

Victim Support Scotland supports the aims of the Bill, acknowledging the need for change to prevent and tackle human trafficking in Scotland. It is our view that support for victims should be kept at the heart of processes and strategies employed to deal with human trafficking. We particularly welcome the policy objective of the Bill to “enhance the status of and support for victims”, as ensuring that victims of human trafficking and exploitation are offered the support that they need is fundamental in minimising the effects and enabling recovery from this crime.

Part 1 - Offences

Victim Support Scotland agrees that a comprehensive approach to the criminalisation of human trafficking is necessary in order to ensure that criminal justice processes are as clear and simple as possible. The current legislative framework for the prosecution of human trafficking is overly complex, particularly in instances of multiple types of exploitation. This moves us to support consolidation of the existing legislation in order to simplify the processes and make the criminalisation of human trafficking more transparent to the public, victims and perpetrators.

VSS has previously shown support for proposals to introduce a human trafficking statutory aggravation¹. Placing human trafficking offences in their correct context would ensure that the severity and effect of such crimes are taken into account by prosecutors and at the point of sentencing. Taken alongside a single Act, this would ensure a clear and consistent criminal justice approach to human trafficking, aiding in the effort to increase currently low levels of prosecution and conviction for this crime. We also support the proposal to increase the maximum sentence that can be imposed on those convicted of trafficking offences. We believe that this will convey the severity of such offences, and may act as a deterrent against such crimes being committed.

The exploitation or abuse suffered by a victim may have much more of an effect on them than the trafficking itself; trafficking is used as a **means** to abuse people, with the abuse or exploitation the ultimate aim of the offender. We therefore agree that offences of exploitation (slavery, servitude or forced labour) should carry a maximum life sentence.

¹ http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/CJ9_Victim_Support_Scotland.pdf

Furthermore, in assessing whether such a crime has occurred, we support the proposal that the victim's characteristics should be taken into account. This approach would recognise that such characteristics (e.g. age, physical or mental illness, or the dynamics of control as within certain family relationships) may in themselves be exploited by the offender to facilitate the abuse. However, we believe that the list of vulnerability factors as currently drafted does not take into account all known vulnerability factors, and does not recognise the often complex interaction between different vulnerabilities. For greater effectiveness in defining victims' vulnerability and to assist prosecutors, we suggest the use of 'an abuse of a position of vulnerability' as an alternative to the specific factors mentioned. This legislative change should be accompanied by guidance and training for those involved in the identification, investigation and prosecution of these crimes, with a focus on the control mechanisms used by traffickers to prevent their victims from leaving or reporting to the authorities.

Part 2 – Protection of Victims

Victim Support Scotland believes that prosecution of victims for crime committed as a direct consequence of human trafficking is a form of secondary victimisation. Victims of human trafficking are often compelled by traffickers to commit crime, or unknowingly break the law, and therefore may be presented to the authorities as offenders; this not only results in further victimisation, but also presents a challenge for identification of victims. Due to the hidden nature of human trafficking, and the issues faced by victims (such as lack of knowledge of their rights, debt bondage, and physical threats and intimidation), identifying victims and prosecuting human trafficking is a complex issue.

Victim Support Scotland therefore welcomes the Bill's proposal to place a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences, although noting that this guidance is already in place. We are cognisant of the stronger provisions contained within the Human Slavery Bill in relation to the protection of victims against prosecution, which includes specific reference to child victims. In noting the reference to compulsion in section 7(2), we are aware that there is no specific reference to child victims in the Bill, to whom compulsion is of no relevance; we therefore suggest that the non-prosecution of children is specifically referred to within the Bill. To ensure effective identification of trafficked victims, it is also essential that solicitors are trained on knowing the signs of human trafficking and how to deal with this within their role.

Any approach to the identification and support of victims of human trafficking needs to be truly victim-centred, encompassing an awareness of the issues facing victims of this crime. We believe that vulnerability cannot be seen from the outside through any pre-set requirements; individuals may be particularly vulnerable at particular times depending on a whole range of factors. As such, we agree with the proposals to provide support based on an individual needs assessment. Services provided to victims of human trafficking should be enabled to take action to meet these needs, in addition to doing as much as possible to prevent the possibility of future exploitation or trafficking of that person. It is vital that the rights to information, support and safety and protection measures provided through the Victims and Witnesses (Scotland) Act 2014 are

communicated to trafficked victims in a manner that guarantees their awareness and understanding.

It is our experience that many victims of crime may require information, support and time **before** they feel ready to report the crime to the police, if ever. It would be reasonable to assume that those who have been trafficked and exploited may be more reticent than the average victim to report the crime, especially considering the prevalence of high levels of mistrust in authorities with human trafficking victims, often brought about by the traffickers themselves. Victims also may take time in recognising that their situation to be one of trafficking. It is therefore crucial that support services are available to suspected victims of trafficking who do not wish to involve the authorities at that time. VSS welcomes the provision that support would not be conditional upon assistance with criminal justice agencies.

Victims should be afforded the opportunity to use support services at any time in their journey, so multiple offers of support should be made, where deemed appropriate. Support services should also be flexible in their approach, and neither time restricted nor dependent on the National Referral Mechanism. We therefore welcome the Bill's proposal to ensure that support can be provided on a discretionary basis out with the mandatory time period for recovery and reflection. We would look for assurances that funding for services would not be linked into the mandatory support period – it is fundamentally important that immigration assessment processes are viewed separately to support arrangements for victims.

Victim Support Scotland also considers it essential that an adequate amount of time is provided between the first disclosure or identification of someone as a potential victim of human trafficking and further interviews with statutory agencies. This approach would take into account the fact that many trafficked victims suffer psychological symptoms such as depression, anxiety or Post-Traumatic Stress Disorder², and are often also affected by threats or control from the trafficker. It must be acknowledged that “the physical and emotional injuries that many trafficking victims endure are likely to affect their ability to concentrate, to make sound decisions, to recall events, and to respond to questions about their experiences.”³ Support during contact with official agencies such as the police should include the right to have a supporter present during interview, and for that supporter to advocate for the wellbeing of the victim.

VSS notes that child victims of trafficking will be supported through child protection services and that s.36 of the Bill defines an adult as an individual aged 18 years or over. We would welcome assurances that this is sufficient to define a child as under 18 years of age, to comply with European and International Law (including the UN Convention on the Rights of the Child), avoid confusion and possible gaps in service delivery for 16 and 17 year olds, and to ensure that the vulnerability of child victims is recognised and dealt with accordingly. We believe that victims who are suspected to be under the age of 18 years should be presumed to be children and treated as such, in accordance with

² Zimmerman, C. et al (2006), '[Stolen Smiles: The physical and psychological health consequences of women and adolescents trafficked in Europe](#)', the London School of Hygiene and Tropical Medicine.

³ Department of State, USA (2013), '[Trafficking in Persons Report](#)', p.21

Article 10 of the 2005 Council of Europe Convention. We are also of the opinion that consideration should be given as to whether a child victim of human trafficking should be provided with an independent guardian.

Part 3 – Confiscation of Property

VSS supports the proposals in Part 3 of the Bill in relation to the confiscation of property of traffickers. It is our view that the proceeds of human trafficking and exploitation offences should be confiscated, wherever possible, to ensure that the victim's exploitation cannot have benefitted the offender in any way. In addition, such provisions would create a hostile environment for traffickers.

Part 4 – Trafficking and Exploitation Prevention and Risk Orders

We welcome the introduction of these Orders, as we support any instrument that will work to prevent further people from falling victim to known traffickers.

Part 5 – Strategy and Reporting

Victim Support Scotland agrees that in order to successfully tackle the issue of human trafficking in Scotland, a legal duty should be placed on Scottish Ministers to prepare a trafficking and exploitation strategy. Any strategy against human trafficking should be victim-centred and committed to ensuring that the best practices are in place for the identification and support of victims. There is a need for awareness raising and training on this issue for both the general public and professionals who may come into contact with victims of human trafficking in their day-to-day lives; this would tackle misconceptions about the nature of human trafficking and enable better identification and responses to victims, and most importantly, improved recognition of the signs that an individual has been trafficked, and knowledge of what to do next. We particularly welcome the suggestion within the Bill that the strategy set out the support and assistance which is to be available to victims of human trafficking and exploitation as we believe that this could be the way to ensure that all victims will have access to adequate, appropriate and timely support. We would welcome consultation on the strategy.

VSS recognises the importance of collecting data on potential victims of human trafficking and exploitation in Scotland. Not only would this provide a clearer picture of the extent of the problem, but would also produce evidence to back up and strengthen support services available to victims of these offences.

Victim Support Scotland
24 February 2015