

15 March 2013

SOCIAL SERVICES AND WELL-BEING (WALES) BILL: CALL FOR EVIDENCE

EVIDENCE FROM CARE ON VICTIMS OF HUMAN TRAFFICKING

Summary

We thank the Health and Social Care Committee for the opportunity to have input to the Committee's scrutiny of the Social Services and Well-Being (Wales) Bill. Our comments focus primarily on the care that human trafficking victims will receive in Wales under the new proposals put forward by this Bill. Our response focuses on Question 8 in Annex 1 of the Committee's letter dated 1 February.

General

Q2. Do you think the Bill, as drafted, delivers the stated objectives as set out in chapter 3 of the Explanatory Memorandum?

The Bill aims to make sweeping changes to the care that all people in Wales will receive. However, the significant number of regulatory powers in the Bill **makes it difficult for there to be informed debate and transparency to the electorate as to the full implications of this Bill**. For instance, a key determination of whether a person will receive services is the definition of the "eligibility criteria" in clause 19 (Determination of eligibility and consideration of what to do you to meet needs) but the criteria are to be set out in regulations (clause 19(5)).

Q6. In your view does the Bill contains a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations?

No. Please see our answer above to question 2.

Powers to make subordinate legislation

Q7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation?

Please see our answer above to question 2.

Financial implications

Q7 (there are two questions marked 7). What are your views on the financial implications of the Bill?

Given the uncertainty about who would be eligible under this Bill, it is impossible to make a judgement on the financial implications. However we are concerned that discretionary services, e.g. to trafficking victims since they are not currently not defined in law, could be cut if the budget was under pressure.¹

Other Comments

Q8. Are there any other comments you wish to make about specific sections of the Bill?

Human Trafficking

We wish to ensure that sufficient consideration is given by the Committee to meeting the international obligations under the Europe Convention on Action against Trafficking in Human Beings and the European Directive on Human Trafficking. We note that in 2011, 2.5% of trafficking victims were referred to the National Referral Mechanism (NRM) from Wales, a total of 24 individuals, 5 of whom were children.² CARE is concerned that without placing the Directive's Article 11 obligations to provide assistance and support to victims on a statutory footing, there is a risk of non-compliance, should any programmes be withdrawn. GRETA (the monitoring body of the Convention) also made recommendations on the need for clear standards for care and assistance for victims of trafficking.³

We commend Wales for the appointment of an Anti-Human Trafficking Co-ordinator⁴.

Adult Victims

In June 2011, the Home Office appointed the Salvation Army to take over the responsibility for delivering support services for adult victims of human trafficking identified through the

¹ See Explanatory Memorandum, January 2013, Part 1, paragraph 105 , page 22

² First Annual Report of the Inter-Departmental Ministerial Group (IDMG) on Human Trafficking, October 2012, Cm 8421, para 2.9 and Table 1, page 9 and para 2.22, page 12

³ Greta (Group of Experts on Action Against Trafficking in Human Beings), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2012)6, 12 September 2012, recommendation 26.

⁴ GRETA, *Op Cit*, para 54, page 21 and pages 98, 99 and IDMG Report, *Op Cit*, para 4.26-7, page 36

NRM.⁵ We seek clarification of whether the governance of this care is going to be transferred to Welsh authorities once this Bill comes into effect.

We also seek clarification as to whether it is the intention of the Bill that local authorities will take preventative measures for suspected adult victims of trafficking either from sexual exportation or forced labour under clauses 104(2) (Adults at risk) and 105(2) (Adult protection and support orders).

Child Victims

CARE is also concerned about the care of trafficked children who would fall under this Bill under the category of “looked after children” (Part 6 of the Bill). Wales does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive).⁶

We would like to see a specific reference to children who are trafficked in clause 60 (Accommodation for children without parents or who are lost or abandoned etc), either as an addition to 60(1)(b)⁷ or as a separate subsection.

We note that clause 20(2)(e) (How to meet needs) refers to the provision of “counselling and advocacy” under “How to meet needs”. Exactly what this would mean for a trafficked child is not clear, but we urge the Committee to recommend the inclusion of a **Guardian or Representative for Trafficked Children** within the Bill to meet the requirements of Article 14(2) & 16(3) of the European Directive. In England, the Government has argued that there is no need for this new role and that current provision is sufficient because of the presence of the various statutory individuals within the Children Act 1989 set out in the table below.⁸ While the Bill incorporates these roles, the evidence of a large number of missing trafficked children raises significant questions about the effectiveness of current arrangements,⁹ nor do any of these roles meet internationally recognized best practice for trafficked children, as defined by bodies such as UNICEF.¹⁰

Role	Children Act 1989	Social Services and Well-Being (Wales) Bill
Independent visitors	Section 23ZB	Clause 82 (Independent visitors for children looked after by a local authority)
Advocate for child who	Section	Clause 86 (Review of cases and inquiries into representations)

⁵ <http://www.salvationarmy.org.uk/uki/Trafficking>. GRETA reported that one of the Salvation Army’s sub-contractors is based in Wales, see para 259, page 60. See also IDMG, paras 5.16-5.25, pages 41-43

⁶ There is a policy on child trafficking victims. GRETA, *Op Cit*, para 237, page 55 and page 106 and IDMG Report, *Op Cit*, para 6.6, page 60

⁷ 60(1)(b) “the child being lost or having been abandoned”

⁸ Including Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children, 2010

⁹ CEOP (2007) A Scoping Project on Child Trafficking in the UK, page 48; CEOP(2009) Strategic Threat Assessment, Child Trafficking in the UK, page 62; CEOP (2010) Strategic Threat Assessment, Child Trafficking in the UK, page 21

¹⁰ For instance: *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF, 2006, p117-8 and *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF technical notes, September 2006, section 4.2, page 17

Role	Children Act 1989	Social Services and Well-Being (Wales) Bill
wishes to make representations to a local authority	26A	mirrors Section 26 of Children Act providing for case review. Section 26A of the Children Act allows a child to have advocacy services. Clause 159 (Assistance for persons making representations) provides for assistance for children if they wish to make representations under Clause 155 (Representations relating to certain children) which covers care plans among other areas.
Independent reporting officer (IRO)	Section 25A, 25B ¹¹	Clause 83 (Appointment of independent reviewing officer) and clause 84 (Functions of the independent reviewing officer). Clause 84(4) allows the IRO to be independent of a local authority, but in practice it appears that the IRO is generally a local authority employee

We note that the GRETA report raised concerns about the number of children that go missing, stated that “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” and urged action to “ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian”.¹²

The UN is encouraging governments “to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child’s interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions.”¹³

Wales has an opportunity to implement a more robust scheme and lead the way in the UK in adopting the UN/UNICEF¹⁴ model. The fact that the numbers of rescued trafficked children in Wales is low is not relevant inasmuch as we should put in place the very best care even if there was just one child. It should not be about numbers. The fact that numbers are fairly low, however, does mean that Wales can lead the way on this issue in the UK at very little cost. There are several places in the Bill where the input of a legal advocate/guardian would be invaluable for a trafficked child:

- Clause 12(5)(3) – Duty to assess the needs of a child for care and support. A legal advocate could be listed in regulations to have input to the outcomes for a child.
- Clause 62(3) - an additional sub-clause (c) to take into consideration the views of the child legal advocate/guardian.

¹¹ Introduced by Section 10 of the Children and Young Person’s Act 2008

¹² Greta Report, *Op Cit*, pages 56-58, paragraphs 240, 245, 247, page 86, recommendations 22 and 23.

¹³ Prevent. Combat. Protect. [Human Trafficking](#). Joint UN Commentary on the EU Directive – A Human Rights-Based Approach. See pages 76-7.

¹⁴ For instance: *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF, 2006, p117-8 and *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF technical notes, September 2006, section 4.2, page 17

Other matters

1. The definition of well-being for children.

We note that well-being in relation to a child includes “physical, intellectual, emotional, social and behavioural development” (clause 2(3)(a)) as well as “physical and mental health and emotional well-being” (clause 2(2)(a)). We advocate amending this definition for children so that it covers “the spiritual, moral, cultural, mental and physical development” of children, in line with the requirements of the school curriculum for Welsh children (section 99(1)(a), Education Act 2002).

2. Supporting Families in Raising Children.

We support clause 6(2)(c) which requires local authorities to provide services “promoting the upbringing of children by their families, where that is consistent with the well-being of children”, in line with Article 18(2) of the UN Convention on the Rights of the Child (UNCRC), “...shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”. However we would like to see:

- A presumption that upbringing of children should be a role for parents, in line with Article 18(1) of the UNCRC, “*recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child*”; and
- A presumption that being brought up with their parents is in the child’s best interests, since this clause applies to **all** families within a local authority area and a child has a right to have parents (Articles 7, 9 and 10 of the UNCRC):
 - “*the right to know and be cared for by his or her parents*” (Article 7(1));
 - “*States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests*” (Article 9(3));
 - “*A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents.*” (Article 10(2))

We recognise that children may not be able to live with both parents because of divorce/parental separation; and that there are cases, especially those where children become looked after, where abuse or neglect could mean that it would not be in the child’s best interests to be with their parents, but other family members might be appropriate carers.

We suggest rewording clause 6(2)(c) so it reads, “*promoting the upbringing of children by their parents, except for when it is not consistent with the well-being of a particular child*”.

Yours sincerely

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