

1. ECPAT UK is a leading UK-based children’s rights organisation campaigning to protect children from trafficking and sexual exploitation by British nationals overseas.

2. ECPAT UK has a long history of campaigning against child trafficking and exploitation in the UK, producing the first research into trafficking of children in the UK in 2001. An on-going programme of research, training and advocacy informs our campaigning efforts. ECPAT UK has been instrumental in raising awareness in government of the plight of children trafficked into the UK for all forms of exploitation, including sexual exploitation. We also work directly with child victims of trafficking, which provides insight into the experiences of these children and the processes/systems that they encounter.

Summary

3. ECPAT UK has many years’ experience of working on the issue of child trafficking and listening to the voices of the young people who have been victims of this crime. It is still a relatively ‘new’ area of law and so is subject to much interest and debate.
4. Despite the UK Government signing up to key legal instruments (such as the EU Directive on preventing and combating trafficking in human beings and protecting its victims and the Council of Europe Convention on Action against Trafficking in Human Beings), it has, in places, failed to translate these protective measures into practice on the frontline, particularly in areas of prosecuting traffickers, early and effective identification of victims, non-criminalisation of victims and providing sufficient safeguarding and protection to child victims.
5. The Government has raised the possibility of opting out of European crime-fighting measures, including Europol, Eurojust and the European Arrest Warrant, which are vital in the fight against trafficking and thus demonstrates a lack of understanding of this global issue.
6. The Government continues to fail to equip practitioners working on the frontline with the tools to identify and safeguard children who may have been trafficked and to prosecute those seeking to exploit them. ECPAT UK and others have serious ongoing concerns about the role of the National Referral Mechanism¹ in identification, enabling access to support and access to legal aid.
7. With official child trafficking figures on the increase (12% from 2011-2012)² more must be done to ensure these children’s rights are upheld and respected.

Investigating child trafficking

¹ http://www.ecpat.org.uk/sites/default/files/ecpat_uk_briefing_on_the_nrm_for_children.pdf

² <http://www.ecpat.org.uk/media/report-shows-substantial-increase-number-trafficked-children>



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8. ECPAT UK has questioned the Government about the low number of prosecutions and convictions for trafficking. In the recent report of the Anti-Trafficking Monitoring Group (ATMG)³, of which ECPAT UK is a member, several key concerns were raised with regard to investigating and prosecuting child trafficking.
9. The tables, attached in Annex 1, sourced from the Government's own review of trafficking legislation⁴, demonstrate the low numbers of prosecutions and convictions, particularly when contrasted with the official number of victims identified via the National Referral Mechanism⁵.
10. There is no clear legal definition of trafficking. Different criminal offences refer to differing definitions, such as those set out in: s.59A of the Sexual Offences Act 2003, s.4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and s.71 of the Coroners and Justice Act 2009. This is problematic in terms of practical application by criminal justice system actors. Individual trafficking offences are underutilised due to low awareness, misunderstanding or perceived evidential difficulties⁶. The ATMG recommends that a unified piece of legislation be enacted to clarify the law to assist to bring the UK in line with its international obligations.

11. With regards to children there is no specific offence of child trafficking in the UK legislation. The 2003 and 2004 Acts are used with regard to offences committed against both children and adults. In its 2012 report GRETA noted the inconsistencies, such as references to children as being variously under 18, 16 or 13. Further, the 2004 Act unhelpfully refers to "young persons" irregularities in this provision. This lack of clarity around the age of a child in UK English law is problematic because, as well as the use of the undefined word 'young' in the Asylum and Immigration Act 2004 is not helpful for those utilising the legislation when working on child trafficking cases.
11. In practical terms, the Anti-Trafficking Monitoring Group reported that children's claims are not always taken seriously with concerns raised about inadequate training of police staff to understand the difficulties victims face in disclosing abuse while still possibly under the control of or in fear of their traffickers. It was recommended that all suspected cases of child trafficking are investigated fully using the child protection measures set out in Section 47 of the Children Act 1989 to trigger multi-agency inquiries and ensure the prosecution of an offence for a sufficient period of time after the trafficked child has turned 18⁷. We support this recommendation.

[Key JCHR recommendations](#)

³ Anti-Trafficking Monitoring Group, In the Dock [2013]

⁴ Report on the Internal Review of Human Trafficking Legislation May [2012]

⁵ <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>

⁶ Ibid

⁷ Anti-Trafficking Monitoring Group, In the Dock [2013]

12. The JCHR made important recommendations on the issue of human trafficking, some of which the UK Government has implemented directly or indirectly. Some recommendations made at the 2005/06 session have been implemented but others have not.
13. One important recommendation on which ECPAT UK campaigned for some time is a transfer responsibility for child victims from the Home Office to the Department for Education, which oversees safeguarding children generally. The immigration focus is damaging and detracts from the message that child trafficking is child abuse and not a crime of immigration, especially as many children do not even have immigration issues when trafficked. Our concerns appear already to be shared by the JCHR⁸.
14. Also noted in the 2005/06 sessions is the lack of training among law enforcement agencies, other agencies and NGOs at local and national levels. Unfortunately, this is still very much the case in 2013. The 2013 JCHR report recommended 'the Government integrate NRM training into pre- and post-qualifying training for the safeguarding workforce'. In ECPAT UK's experience, as providers of safeguarding training on trafficking, most social workers and other frontline practitioners have little understanding of trafficking: its definition, indicators, risks, responsibilities and safeguarding responses. There is still very much a need for quality and regular training, which arguably should be accredited in some way.
15. The success of Operation Paladin Child, a multi-agency team at Heathrow Airport, was highlighted as a good practice model that should be extended to other rail, air and sea ports of entry to monitor the flow of trafficked unaccompanied minors and ensure better identification (recommendation 23). Disappointingly, the Paladin team has recently been reduced (June 2013) and there are no known plans to extend the model elsewhere in the UK, despite its success, which is recognised by the Government itself⁹.
16. From the 2006-07 session, the ratification of the Council of Europe Convention on Human Trafficking and the removal of the reservation to the UN Convention on the Rights of the Child were recommended. Both of these have now successfully been implemented.
17. Yet in that same year, the JCHR recommended the Government publish an annual report to Parliament about its work on human trafficking. The first of these was published last year by the Inter-Departmental Ministerial Group (IDMG). ECPAT UK welcomed the publication of the IDMG's report, which provided a good overview of the Government's activities to tackle human trafficking. However, as the IDMG is made up of Ministers and is therefore not independent of the Government, the report lacks an objective and robust assessment of the Government's anti-trafficking measures and outcomes. The report's omissions, lack of analysis, erroneous

⁸ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/902.htm>

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118116/human-trafficking-report.pdf

interpretations and a lack of focus on child victims put in question the objectivity of the self-evaluation approach claimed by the IDMG¹⁰.

18. The 2013 report recommends that the Government evaluates the case for 'establishing a wider guardianship scheme throughout England and Wales' following the success of the Scottish Guardianship Service pilot (recommendation 31). ECPAT UK has been campaigning for guardianship¹¹ for child victims of trafficking for five years with little success, despite cross-sector support¹² and provisions for guardianship in the Council of Europe Convention on Trafficking and the EU Directive on Trafficking.
19. In addition, a recent Home Office-backed report echoes the need for an 'independent trusted adult' for trafficked children¹³.

Legal aid

20. ECPAT UK has already responded to the JCHR call for evidence regarding legal aid¹⁴, however, we believe the points made below are directly relevant to this call for evidence also.
21. ECPAT UK is concerned that the current proposals contained in the Government's consultation paper *Transforming Legal Aid: Delivering a more credible and efficient system* been put forward before the legal aid changes implemented by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) can be measured or effectively understood.
22. ECPAT UK has expressed concerns about the effects the proposed residence test would have in preventing trafficked children accessing legal aid in those areas of law where legal aid still exists currently after LASPO, such as public law, community care, special educational needs, homelessness and public and certain private law family proceedings.
23. On our consultation response to Transforming Legal Aid, we stated that the proposed changes would result in an unfair inequality of arms between the state and an individual subject to its power – an inequality that is all the more marked for children and young people, whose particular vulnerabilities create distinct barriers to their ability to access justice and have their voices and wishes heard, and particularly where there is no guardianship provision in place for child victims; all too often child victims are reliant upon their legal aid solicitors for a holistic service

¹⁰ Read more on the parliamentary debate on the IDMG report: <http://www.ecpat.org.uk/media/ecpat-uk-campaign-calls-raised-parliamentary-debate-first-idmg-report-human-trafficking>

¹¹ <http://www.ecpat.org.uk/campaigns/guardianship>

¹² <http://www.ecpat.org.uk/content/high-profile-supporters>

¹³ <http://www.ecpat.org.uk/media/trafficked-children-need-better-protection-says-new-report>

¹⁴ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/legal-aid-inquiry---call-for-evidence/>

24. Directive 2011/36 to prevent and combat trafficking in human beings and protect victims (hereafter 'the Trafficking Directive' makes clear provisions for child victims with regard to access to legal representation. Article 12.2 states:

'Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.'

25. We believe that, without such access, victims of trafficking will certainly struggle to challenge instances where they have been wrongfully criminalised, such as in the recent case of one adult victim of trafficking and three minors who had been trafficked for cannabis cultivation (R v L & Others [2013] EWCA Crim 991) as well as the police's failure to investigate claims, under Article 4 of the European Convention of Human Rights or the EU Trafficking Directive 2011/36/EU.
26. As a result of pressure from NGOs, the Ministry of Justice has recently announced an exception would stand for 'victims of human trafficking' when applying the residence test. Although this is a positive step, it is not a blanket concession and it will not allow child victims of trafficking access to all areas of legal advice. At this point, the Government has only said that it will allow victims of trafficking to be exempt from the residence test for the purposes of immigration advice, employment advice or a damages claim. Victims will not be entitled to legal aid to receive advice or bring proceedings in relation to the vitally important areas of community care, housing, the failure of public bodies to perform their safeguarding duties, challenges to police failure to investigate trafficking, bringing compensation claims against the state in respect of ill treatment (such as in a children's home or detention centre or by the police).
27. Further, and vitally, there will be no legal aid for victims to challenge negative NRM decisions (such challenges are brought about via a judicial review as there is no formal appeal system).
28. In addition, the Government's latest trafficking statistics show that 64% of all potential known victims did not go through the NRM system, highlighting how a legal aid system dependent on NRM decisions will not benefit the majority of victims.
29. Notably, also, even where a child victim is granted leave to remain in the UK, the exclusions will continue to apply until he or she has accrued 12 months lawful status. Therefore, the exclusions set out above will continue their negative impact and could lead to disastrous consequences on and already vulnerable group of children.
30. Despite their acknowledged vulnerabilities, child victims are still without independent guardians who can act in their best interests and hold public bodies to account. This situation will certainly be exacerbated if the proposed legal aid changes become law, which will mean children are more powerless to challenge local authorities, police and other public bodies when they fail to act in their best interests or to provide what they are required to.

Conclusion and recommendations

31. Whilst there has been progress in the area of trafficking In ECPAT UK's experience, yet the Government has not fully implemented key recommendations and obligations on the State have not filtered down to frontline practice.
32. A lack of awareness and quality training among frontline practitioners means children are not being identified, which has serious knock-on consequences for investigations and prosecutions, as well as protection and safeguarding.
33. Despite their acknowledged vulnerabilities, child victims of trafficking are still without independent guardians who can act in their best interests, guide them safely through the prosecution of their trafficker/s and hold public bodies to account.

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ANNEX 1

Case statistics for prosecutions

19. The following offences have been charged and prosecutions commenced for trafficking, in England and Wales, during the period 2005 – 2012.

Table 1 – Trafficking offences 2005-12

Year	Trafficking for sexual exploitation (Sections 57, 58 and 59 Sexual offences Act 2003)	Trafficking for other exploitative purposes (Section 4 Asylum and Immigration (ToC) Act 2004)	Offence of forced labour and servitude (Section 71 Coroners and Justice Act 2009)	Total
2005-06	18	0	-	18
2006-07	40	0	-	40
2007-08	87	3	-	90
2008-09	114	10	-	124
2009-10	102	20	-	122
2010-11	96	21	-	117
2011-12	113	37	15	165
Total	570	91	15	676

Convictions in the UK

20. The table below shows the number of successful convictions, specifically for trafficking offences, within England and Wales between 2009 and 2011. During the same period Scotland had two successful convictions for sexual exploitation. Northern Ireland had no convictions for sexual or non-sexual exploitation under trafficking legislation.

Table 2 – Number of Human Trafficking convictions in England and Wales

Year	No of convictions for sexual exploitation	No of convictions for non sexual exploitation	Total
2009	23	2	25
2010	10	6	16
2011	8	0	8
Total	41	8	49

The number of human trafficking convictions recorded are on a principal offence basis only. They do not include human trafficking convictions on an all offences basis.

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