



**Office of the Children's Commissioner:
Response to list of issues on the UK's
initial report submitted under the
Optional Protocol on the sale of
children, child prostitution and child
pornography**

April 2014

About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Bill also allows us to provide advice and assistance to and to represent these children.

Our vision

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our mission

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

Response to list of issues on the UK's initial report submitted under the Optional Protocol on the sale of children, child prostitution and child pornography

Introduction

The Office of the Children's Commissioner (OCC) submitted a response to the to the Committee in July 2013 in response to the UK's initial report submitted under the Optional Protocol on the sale of children, child prostitution and child pornography.

Many of the issues highlighted in our submission have been included in the Committee's list of issues for the forthcoming examination. We take this opportunity to provide the Committee with some additional information on the issues raised, and to highlight relevant developments since October 2013.

At the time of writing, the UK Government has not issued its response to the Committee's questions, so it has not been possible for the OCC to comment on the UK's response.

OCC endorses the Equality and Human Rights Commission's submission to the Committee, notably the EHRC's comments on the provisions in the draft Modern Slavery Bill and on children's access to justice and civil legal aid.

Amongst the recommendations of our Inquiry into Child Sexual Exploitation by Gangs and Groups (CSEGG) was that the UK Government conduct a review of all legislation and guidance which makes reference to children as 'prostitutes' or involved in prostitution, instead acknowledging that such children are victims of sexual exploitation. This has been accepted in principle by the UK government. **We respectfully recommend that the Committee considers whether there is scope to issue a new General Recommendation to enable the Committee to set new standards in this area.**

Issue 5

Please indicate the progress made by the State party in implementing the recommendations in the 'Accelerated Report' of the Child Sexual Exploitation in Gangs and Groups (CSEGG) Inquiry by the Office of the Children's Commissioner. Please also provide further details on preventive measures which have been taken to protect children in vulnerable situations, such as children in contact with or linked to gang members or groups (particularly in England), children in street

situations, migrant children, irregular migrant children and children living in institutions, from offences under the Optional Protocol.

Update: OCC's Inquiry into Child Sexual Exploitation in Gangs and Groups

Since the OCC's 'Accelerated Report' was published in July 2012, there have been two main Inquiry reports.

In November 2012, OCC published its interim report – *'I thought I was the only one. The only one in the world'*.¹ This report provided data on the extent to which children in England are being sexually exploited by gangs and groups. Between August 2010 and October 2011, 2,409 children were identified as confirmed victims, and at least 16,500 children were identified as being at risk of child sexual exploitation during one year. The report made a number of initial recommendations in relation to the recognition of child sexual exploitation, the identification of victims and perpetrators and the process of recording and sharing data.

In November 2013, OCC published the Final report of the CSEGG Inquiry – *'If only someone had listened'*.² This element of the Inquiry focused on measures to prevent child sexual exploitation in gangs and groups, highlighted the foundations for effective practice for safeguarding children, and recommended the adoption of a child-centred framework for preventing the sexual exploitation of children; identifying, protecting and supporting victims; and disrupting and stopping perpetrators, securing justice for victims and obtaining convictions.

Comment

The OCC welcomes the UK Government's increased recognition of child sexual exploitation, and the changes made to guidance for investigating and prosecuting cases of child sexual exploitation over the past year.

Limited space does not allow us to set out progress on every recommendation made by the Inquiry.

Action at a national level

There have been a number of reforms in this area which we consider will be particularly significant in increasing the protection of children's rights:

¹ Berelowitz, S. et al (2012). *"I thought I was the only one. The only one in the world"* The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups Interim Report. London: Office of the Children's Commissioner. Available at www.childrenscommissioner.gov.uk

² Berelowitz, S. et al (2013). *"If only someone had listened"* The Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups Final Report. London: Office of the Children's Commissioner. Available at www.childrenscommissioner.gov.uk

- Current reforms designed to improve the safeguarding of children in residential children's homes, and children who go missing from care: the recommendations from the CSEGG Accelerated report have been substantially implemented by recent regulatory changes concerning residential care³.
- Widespread dissemination of the Inquiry's list of warning signs and risk indicators of Child Sexual Exploitation to a range of professionals, as recommended by the Interim Report.
- Linked guidance from the College of Policing (*Guidance on Child Sexual Exploitation*)⁴ and the Crown Prosecution Service (*Guidelines on Prosecuting Cases of Child Sexual Abuse*)⁵ which address a range of the CSEGG Inquiry recommendations.
- The role of the Office for Standards in Education, Children's Services and Skills (Ofsted) has been strengthened to include inspections of Local Safeguarding Children Boards, in order to improve compliance with existing national guidance on safeguarding children from sexual exploitation⁶.
- The Home Office is working with the Information Commissioner to develop a guide to sharing information, which will facilitate multi-agency responses to child sexual exploitation at a local level.
- The Association of Chief Police Officers (ACPO) has developed a national action plan for tackling Child Sexual Exploitation across England and Wales, with a specific lead police officer for Child Sexual Exploitation appointed in each police force⁷.
- The Home Office has established a National Group to tackle Sexual Violence Against Children and Vulnerable People⁸, which will launch a new national action plan in November 2014.

The UK Government has taken forward some actions to educate children and young people on Child Sexual Exploitation, including a public campaign, entitled 'This is Abuse', which aims to prevent children and young people from becoming victims and perpetrators of abuse. Although the UK Government has reaffirmed that all schools should provide high quality Personal, Social, and Health Education (PSHE), the OCC would encourage the UK Government to mandate Relationships and Sex Education (RSE) in every educational setting as part of a holistic/whole school approach to child

³ For a summary, see the UK government's [Improving the adoption system and services for looked-after children](#)

⁴ College of Policing '[Guidance on Child Sexual Exploitation](#)'

⁵ Crown Prosecution Service ([Guidelines on Prosecuting Cases of Child Sexual Abuse](#))

⁶ Ofsted, Framework and evaluation schedule for the inspection of services for children in need of help and protection, children looked after and care leavers (single inspection framework) and reviews of Local Safeguarding Children Boards, December 2013

⁷ Association of Chief Police www.acpo.police.uk/documents/crime/2012/201210CSEplan.pdf

⁸ Policy paper, [Sexual Violence against Children and Vulnerable People National Group](#), 2013

protection, which includes education regarding the getting and giving of consent to sexual activity.

The OCC would also encourage the Department of Education to review and revise the existing national guidance on safeguarding children from sexual exploitation to ensure that all agencies involved in child safeguarding have an up to date and shared understanding of Child Sexual Exploitation.

Action at a local level

Many of the CSEGG Inquiry recommendations are directed at local bodies. Without effective local collaboration, clear leadership, strategic planning, training, and a shared awareness of the warning signs, all with a shared focus on children and the skills and trust required to gain their confidence, children will slip through the net.

We consider consistent and concerted progress in every local area on the following necessary actions identified by the Inquiry to be vital if children are to be protected from sexual exploitation:

- Information sharing protocols in every local area that specify every agency's and professional's responsibilities and duties for sharing information about children who are or may be in need of protection.
- Local problem-profiling of victims, offenders, gangs, gang-associated girls, high risk businesses and neighbourhoods, coordinated by Local Safeguarding Children Boards.

Many examples of high quality local work were identified by the Inquiry. However, the second year of the CSEGG Inquiry found that practice at local level is variable. While 98% of Local Safeguarding Children Boards reported that they considered child sexual exploitation to be a strategic priority, almost half (49%) were unable to tell us how many victims had been identified during 2012 in their local area, and 31% reported no specialised CSE services in their areas.

Police forces in England have taken a leading role in tackling Child Sexual Exploitation. It is essential that other partners, including local authorities and health services, work together with the police to effectively prevent Child Sexual Exploitation and protect vulnerable children. Given the requirements on the General Measures of Implementation set out in Article 4 of the UNCRC, the Committee may wish to consider whether steps taken by the UK Government to encourage action at a local level are sufficient to ensure the effective protection of vulnerable children from sexual exploitation.

Issue 5: recommendations

- (i) OCC recommends that the UK Government mandates Relationships and Sex Education (RSE) in every educational**

setting as part of a holistic/whole school approach to child protection, which includes education regarding the getting and giving of consent to sexual activity.

- (ii) The OCC recommends that the Department of Education reviews and revises the existing national guidance on safeguarding children from sexual exploitation to ensure that all agencies involved in child safeguarding have an up-to-date and shared understanding of Child Sexual Exploitation.**
- (iii) The Committee may wish to question the UK Government on the extent to which steps taken to encourage action at a local level are sufficient to ensure the effective protection of vulnerable children from sexual exploitation.**

Issue 9

With reference to recent concerns about the way some child victims have been treated in court, please elaborate on the measures taken to protect the rights and interests of child victims and witnesses of crimes under the Optional Protocol at all stages of criminal proceedings. Please also indicate the measures taken to ensure that child victims of offences under the Optional Protocol are treated exclusively as victims in need of recovery and reintegration and not as offenders or charged in connection with other crimes related to their status, as recommended by the Committee in 2008 (CRC/C/GBR/CO/4, para 74).

Update and comment

In our original submission to the Committee in July 2013, the OCC highlighted a recent court case in which OCC intervened as a third party, concerning the prosecution of Vietnamese child victims of human trafficking and the criminal courts' practice of 'deeming' age in the absence of documentary evidence.⁹

We understand that this case has been a catalyst for the Crown Prosecution Service to review its current guidance¹⁰ on prosecuting cases of human trafficking and that new guidance will reflect the Court of Appeal's view that prosecution in such circumstances may be an abuse of process. We hope that the CPS will regard a 'conclusive grounds' decision that a person is a victim of trafficking under the National Referral Mechanism as sufficient reason to find that it is not in the public interest to prosecute. This is not currently the case, and the Committee may wish to seek assurances that it will be the case in future.

OCC's submission also highlighted the impact that official attitudes can have on the willingness of sexually exploited children to seek support, where they also engage in offending behaviour as a consequence of their exploitation.

⁹ Court of Appeal (Criminal Division) case of *L, HVN, THN, T v R* [2013] EWCA Crim 991

¹⁰ CPS Policy for Prosecuting Cases of Human Trafficking (May 2011)

The piloting of pre-trial recording of cross-examination and re-examination of vulnerable witnesses in criminal trials under section 28 of the Youth Justice and Criminal Evidence Act 1999 is also welcomed, and the OCC urges the UK Government to roll out this approach across the country as soon as possible. There has, however, been little movement in managing the impact of court processes on children who have been victimised by multiple perpetrators, resulting in victims being cross-examined by each defence barrister, often escalating and intensifying the trauma of giving evidence in court.

In October 2013, the Crown Prosecution Service published new Guidance on Prosecutions in cases of Child Sexual Abuse. These are designed to ensure that the prosecution focuses on the overall credibility of an allegation rather than the perceived weakness of the person making it. They include guidance for prosecutors when the child or young witness has previous convictions, which reflects the findings of OCC's and other research into child sexual exploitation.

Issue 9: recommendations

- (i) The Committee may wish to seek assurances that the Crown Prosecution Service will regard a 'conclusive grounds' decision that a person is a victim of trafficking under the National Referral Mechanism as sufficient reason to find that it is not in the public interest to prosecute.**
- (ii) The OCC recommends that the UK Government rolls out pre-trial recording of cross-examination and re-examination of vulnerable witnesses in criminal trials under section 28 of the Youth Justice and Criminal Evidence Act 1999 across the country as soon as possible.**

Issue 10

Please provide information on the measures to develop holistic and victim-centred 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.

During research for our report *Landing in Dover* (January 2012)¹¹ OCC secured a commitment from the Home Office that they would cease using a bilateral agreement with France whereby unaccompanied children not claiming asylum could be refused entry and 'bounced back' to France without referral to the local authority for a child protection assessment. We conclusively demonstrated that at least 6 Vietnamese children had been returned to France under this agreement in 2011. The 'Gentleman's

¹¹ Office of the Children's Commissioner, "*Landing in Dover*", January 2012, available at www.childrenscommissioner.gov.uk

agreement' can still be used in relation to adults and OCC was unable to secure a guarantee that those claiming to be children but assessed by immigration staff as adults on the basis of their appearance and demeanour would be referred to the local authority for an age assessment before removal was enforced. We have yet to see an instruction to Border Force regarding the use of the 'Gentleman's Agreement' in relation to children despite several requests. The Committee may wish to enquire whether such an instruction is planned.

OCC has made two visits to Heathrow during 2013 and were impressed by the comprehensive arrangements in place to detect children who may be trafficked. However, the Metropolitan Police's 'Paladin' team has been reduced in capacity and is no longer a round-the-clock service. We have not seen any evaluation of the effects of the reduction in manpower.

Despite good initiatives such as Operations Paladin and Newbridge (operating around Gatwick airport) there does not yet appear to be a comprehensive UK-wide approach to protecting children at ports. We do think however that Border Force are taking the issue very seriously. OCC would recommend that national process guidance is issued to guide Border Force staff on how they should act when they come across children attempting to enter using false documents. We are aware of cases where children have been prosecuted and sometimes, in the absence of documentary proof of age, imprisoned as adults.

Issue 10: recommendations

- (i) The Committee may wish to enquire whether an instruction to Border Force staff regarding the use of the 'Gentleman's Agreement' in relation to children is planned.**
- (ii) The Committee may wish to enquire whether an evaluation is planned to assess the impact of reduced capacity of the Metropolitan Police's 'Paladin' service.**
- (iii) OCC recommends that national process guidance is issued to guide Border Force staff on how they should act when they come across children attempting to enter using false documents.**

Issue 11

Please indicate the 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. Please indicate how the State party ensures that child victims are properly informed about the existence of such services.

Comment and update

Once children have been identified as victims/potential victims of Child Sexual Exploitation they often require enduring and sustained support, sometimes lasting for a number of years. For children and young people, knowing that there is somebody who will be there for them is crucial in building trust and keeping them safe. The CSEGG Inquiry identified examples of services that were providing that level of support. However, we remain concerned that short-term interventions continue to be commissioned for children who require support for a longer time period.

A new Victims' Code was published in December 2013¹², and includes specific entitlements for children who are victims of crime, and a children and young people's version of the code. There is much in the code which is to be welcomed, including automatic qualification for enhanced entitlements for children, and an explicit focus on children's best interests. However, the code offers little in the way of guaranteed entitlements to practical health, social or psychological support which are vital to children who have been victims of child sexual exploitation. OCC's view is that the Victim's Code also falls short of meeting the specific duties for providing support to victims of trafficking set out in EU Directive 2011 on preventing and combating trafficking in human beings and protecting its victims.

OCC has long argued that all separated and unaccompanied children, including those who may have been trafficked, should be appointed a Guardian when first encountered. While we are pleased that the UK Government has committed to a trial of what have been termed 'special advocates' as part of pre-legislative work on the Modern day Slavery Bill, the UK Government position remains that Guardians are not necessary. We hope that the pilot will demonstrate the 'added value' that a guardian-type role can provide to a trafficked child.

The pre-legislative scrutiny of the Modern day Slavery Bill has considered the current system for identification and recognition of victims of trafficking (the National Referral Mechanism) but it remains unclear whether the UK Government will address the deficiencies in current arrangements within the Bill. As we argued in our response to the Bill's evidence review, OCC recommends that one 'competent authority' should make decisions on identification of victims and this should be separate from functions pertaining to immigration control.

Current 'leave' arrangements for those recognised as victims of trafficking may result in a grant of 'Discretionary Leave'. The nature of the leave will not permit access to student support for Higher Education. Given the importance of education in reintegration of victims, OCC recommends that this be

¹² Statutory guidance, [The code of practice for victims of crime and supporting public information materials](#), October 2013

addressed in the Modern Slavery Bill.

Issue 11: recommendations

- (i) The Committee may wish to enquire what plans the UK government has to ensure adequate, sustained support for children who have been the victim of child sexual exploitation.**
- (ii) OCC recommends that the UK Government introduces a Guardian system so that all separated and unaccompanied children, including those who may have been trafficked, are appointed a Guardian when first encountered.**
- (iii) OCC recommends that one 'competent authority' should make decisions on identification of trafficking victims and this should be separate from functions pertaining to immigration control.**
- (iv) OCC recommends that access to student support for Higher Education is incorporated in the Modern Slavery Bill.**