

# Refugee Children's Consortium

## Modern Slavery Bill Report Stage Briefing – House of Lords Clause 1: Child exploitation 23 and 25<sup>th</sup> February 2015

### Introduction

The Refugee Children's Consortium (RCC) welcomes the amendment by Lord Bates to the Clause 1 offence of Slavery, Servitude and Forced or Compulsory Labour, which provides some further clarification about what type of conduct is covered by the Clause 1 offence. However, the RCC is very concerned that Lord Bates' amendment to Clause 1 doesn't go far enough to protect children. We urge Peers to ensure the Minister's reaffirms the government's previously stated intention, that where the victim is a child, it shall be an offence under Clause, 1 even if there is no evidence of force, threat, deception or any type of coercion.

### Briefing

#### ***Lack of clarity in Clause 1 for exploited children***

In a letter to Peers dated 16 February 2015, Lord Bates said the Bill makes clear that: '*Where a person deliberately targets a vulnerable person, such as a child, there is no requirement for any force, threats or deception to be used to induce the child into being exploited.*' However, the RCC believes that, as currently drafted, the Bill does not make this point clearly enough, despite the best intentions of Government.

Clause 1(4) states that '*regard may be had to any of the person's personal circumstances (such as the person being a child...), which may make the person more vulnerable than other persons*'. The intention here to demonstrate the vulnerability of children to such offences is not an absolute – it is only something that regard '*may be had to*', not '*must*'. The RCC believes that it should be an absolute condition of the Clause 1 offence that being a child at the time the offence is committed is considered a vital element of deciding if a person is held in slavery, servitude or required to perform forced or compulsory labour.

Clause 1(5) highlights that consent of an adult or child to any of the acts '*does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour*'. Whilst the intention of this sub-section is to provide some protection to those most vulnerable, including children, who may appear to consent to such abuses, it is not made clear that it shall be an offence to hold a child in slavery, servitude or forced or compulsory labour *even where there is no force, threats, coercion or deception*. Children cannot consent to their own exploitation. The internationally agreed definition of trafficking establishes children as a special case, acknowledging that a child cannot give consent to being exploited, even if they are aware or agreeable to being placed into a situation of exploitation. It is the firm opinion of the RCC that the Modern Slavery Bill does not translate this special recognition strongly enough, which puts exploited children at risk.

Children, who are known to be '*particularly vulnerable*' to exploitation, have often been groomed into a life where exploitation is sadly '*the norm*', or some may also have additional vulnerabilities such as learning disabilities. They may even display elements of Stockholm Syndrome and become attached to their abuser. This means children often do not realise they have been exploited as they are not aware of their own rights. In some instances, a child is exploited by their own family and so the coercion is particularly subtle and hard to establish. When found by authorities there is little of the evidence available to prove beyond reasonable doubt the high threshold of Slavery, Servitude, Forced or Compulsory Labour as defined by international law and conventions. The Government has not yet shown how Clause 1 will overcome the evidential barriers, which are exacerbated by the lack of case law involving child witnesses.

The RCC is aware of cases where a child has been exploited for years in domestic servitude by a family who benefits from their labour. Yet because the child may still be sent to school and/or

displays some attachment or gratitude to the family for what is believed to be the provision of care, the investigation is dropped and no charges are brought against those adults who have enslaved the young person without pay, in a country miles away from their family. The RCC is aware, for example, of a case where police refused to prosecute because the young person had (forcibly) written a letter to her abusers to thank them for looking after her, even though she was being exploited. A child cannot consent to this abuse and the Modern Slavery Bill must clearly account for and recognise this.

**Therefore, the RCC believes the Bill must clearly translate into our legislation Lord Bates' stated intention – that where the victim is a child, 'there is no requirement for any force, threats or deception to be used to induce the child into being exploited'.**

#### ***Getting Clause 1 right for child victims***

A focus on 'travel' in the human trafficking offence in the Bill may mean a reliance on Clause 1 offences to prosecute child exploitation cases. As currently drafted, the Clause 2 offence of human trafficking still requires evidence to show there was intention to exploit at the time the child was 'moved'. Our evidence shows that it is not unusual for exploited children to be passed between many people, who may be near impossible to trace as the child cannot identify them. Therefore, if the person/s exploiting the child had nothing to do with arranging the travel with the intention of exploiting the child, the police may have evidence of exploitation but not sufficient evidence to use the human trafficking legislation. It is also the case that the Clause 2 offence only makes consent irrelevant where the victim consents to the travel, not to the exploitation. The Palermo Protocol clearly states that a child cannot consent 'to the intended exploitation' – not the travel or arrangements of movement.

Because of these concerns over the application of Clause 2 for many child exploitation cases, it is, therefore, imperative that the Clause 1 offence effectively captures the situations of exploitation where travel cannot be established so that perpetrators do not go unpunished and so children are able to access justice for the heinous crimes committed against them.

The Crown Prosecution Service has been unable to identify any cases where the victim was a child at the time of prosecution where Section 71 of the Coroners & Justice Act 2009 was used (since its introduction).<sup>1</sup> This is the offence of Slavery, Servitude, Forced and Compulsory Labour that forms the basis of Clause 1 of the Modern Slavery Bill. Of the 59 defendants charged with human trafficking offences in 2013-14, there was only one case that was *not* sexual exploitation in cases relating to child victims.<sup>2</sup> It should not be the case that adults who inflict certain forms of exploitation on children are more likely to be convicted than those who exploit in another way. There is not one conviction for trafficking or forced labour of a child in a cannabis factory but hundreds of children are thought to have been identified in cannabis factories across the UK. **The Clause 1 offence must be improved if we want to convict more child abusers.**

Whilst the RCC welcomes concessions already made in Clause 1 to attempt to clarify the position of consent and vulnerability of children, it has not gone far enough to ensure that this offence is drafted clearly, in a way that can be easily interpreted by police, prosecutors, jurors and judges. A stated ambition of the Modern Slavery Bill is to prosecute more traffickers and those who enslave victims. However, the current drafting is confused and does not clearly state that children cannot be forced, coerced or deceived into exploitation of any form.

By simply stating on the face of the Bill that, where the victim is a child at the time an offence is committed, there is no requirement whatsoever for any force, threats or deception to be used to induce the child into being exploited – which are Lord Bates' exact own words – the Modern Slavery Bill could make the internationally accepted position for children more clear and this would benefit all those working to prosecute those that exploit our most vulnerable citizens. The international legislation is designed to recognise children as a special case and to take into account their specific vulnerabilities. Our domestic legislation must also overtly make this point if we seek to improve the rates of prosecutions and convictions in such cases and tackle the depressing growth of child exploitation in the UK.

Lord Bates says the Government is keen to make sure that Clause 1 'can be used effectively where the victim is a child'. The most efficient way to do this is to make it incontestable that where

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<sup>1</sup> HL Deb, 22 July 2014, c185W

<sup>2</sup> HL Deb, 7 July 2014, c4W

the victim is a child in either a Clause 1 offence or a Clause 2 offence that there is no requirement to prove that the use of force, threat, deception or coercion have been used to entice the child into a situation of exploitation.

**The RCC, therefore, urges Peers to call for this important clarification in our modern slavery laws that will enshrine sufficient protection for children so that the UK is properly equipped to win the fight against child exploitation.**

The Refugee Children's Consortium (RCC) is a group of 50 NGOs. Members of the RCC are: Action for Children, Asphaleia Action, Asylum Aid, Association of Visitors to Immigration Detainees (AVID), Bail for Immigration Detainees, The British Association of Social Workers (BASW), Brighter Futures, British Association for Adoption and Fostering (BAAF), Catch22 National Care Advisory Service, Children and Families Across Borders (CFAB), Coram Children's Legal Centre, Children England, Child Poverty Action Group (CPAG), Children's Rights Alliance for England, The Children's Society, DOST, ECPAT UK, Family Rights Group, The Fostering Network, Family Service Units (FSU), Freedom from Torture, Gatwick Detainees, Kent Refugee Action Network, Klevis Kola, The Immigration Law Practitioners' Association (ILPA), Islington Law Centre, JCORE, Law Centres Network, Medical Justice, NCB, NSPCC, OMID International, Project 17, The Poppy Project, The Prince's Trust, RAMFEL, Refugee Action, Refugee Council, Refugee Support Network, Royal College of Paediatrics and Child Health, Scottish Refugee Council, Student Action for Refugees (STAR), UNICEF UK, Voice, The Who Cares? Trust, and Welsh Refugee Council.

Barnardo's, British Red Cross, Office of the Children's Commissioner (England) & UNHCR all have observer status.  
<http://www.refugeechildrensconsortium.org.uk/>

**The RCC is happy to have the support of The Anti-Trafficking Monitoring Group on this issue.**

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