

EXECUTIVE SUMMARY

ACHIEVING A DURABLE SOLUTION FOR TRAFFICKED CHILDREN

2015 RESEARCH FROM UNICEF UK

**FOR
EVERY
CHILD IN
DANGER**

unicef 
UNITED KINGDOM

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BACKGROUND

Around one in five victims of trafficking in the UK are children under 18.¹ One of the recurring themes revealed by the stories that trafficked children tell Unicef UK is how difficult and frightening it is for them to deal with the uncertainty of what is going to happen to them in the future.

A durable solution is the long-term sustainable arrangements that we make for unaccompanied asylum seeking children, including those who have been trafficked. It means plans are in place, support is available, and children are helped throughout their childhood with a view to their future. It gives children stability, security, and a chance to heal and develop. A durable solution can also play a role in preventing re-trafficking.

Although positive legislative changes have been made to tackle trafficking in terms of protection and prosecution, especially through the Modern Slavery Act 2015 in England and Wales and comparable legislation in Northern Ireland and Scotland,² there is still no formal policy or procedure in place to make lasting arrangements for trafficked children that are in their best interests. This results in a significant gap in the protection provided to them.

BASIS OF THE RESEARCH

The UN Committee on the Rights of the Child states that the aim in addressing the future of an unaccompanied migrant child, including those who have been trafficked, is to identify a durable solution – one that meets all their protection needs, takes into account the child's views, and leads to a longer term sustainable arrangement for the child rather than a short term resolution. There are three possible durable solutions: a return to the child's country of origin; settlement and integration into the host country; or relocation to a third country. In all three cases, achieving a durable solution for a child who has been trafficked requires a robust child protection response.

In 2015, Unicef UK commissioned research to explore the implications of what we believe is a protection gap for trafficked (and potentially trafficked) children; and to describe what changes need to take place. Thirty key stakeholders who work with trafficked children were interviewed to identify where the system is working, and where it needs to improve to better protect children. Whilst our research was focused on immigration legislation and policy that applies to all four jurisdictions of the UK, when considering children in care and child protection legislation it focuses on England.

¹ National Crime Agency (2015) National Referral Mechanism Statistics – End of Year Summary 2014

² Modern Slavery Act 2015 (England and Wales); Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015; Human Trafficking and Exploitation Act (Scotland) 2015.

RESEARCH FINDINGS

The trafficking of children may be associated with transnational organised crime, global migration movements and immigration, yet ultimately it is about the abuse and exploitation of children and, first and foremost, should be a child protection matter. It damages children both in the short and long-term, destroying the childhood of many trafficking victims. Yet the current system and services too often fail to provide the support these children need.

Our research found that:

1) The local authority care system and the immigration system run on parallel lines, often undermining the child's right to be protected

- Many of those who work with child victims of trafficking are not meeting even the most basic requirements and responses towards these children, and trafficked children are not considered children in need of protection. A child's immigration status – and status as a migrant in general – often takes precedence over their status as a child victim of trafficking.
- Existing forms of protection and leave available are not appropriate for child victims of trafficking. The majority of unaccompanied children are given Unaccompanied Asylum Seeking Child (UASC) leave – a temporary form of leave granted for 30 months or until a child reaches the age of 17½, whichever is shorter. This undermines the very concept of a durable solution for each child.

2) Practitioners demonstrate low levels of understanding about trafficking and the need for independent support for child victims of trafficking

- Too many front line workers, including social workers, police, health workers and education staff do not understand the concept of trafficking, or recognise the indicators of trafficking in child victims. Some trafficked children are perceived as criminals rather than as victims of crime, which has far reaching consequences for them. The principle of the non-prosecution of trafficked children for offences committed as a direct consequence of being trafficked is still not well known and fully implemented. There is insufficient training on trafficking.
- The framework for considering whether a child has or has not been trafficked – the National Referral Mechanism (NRM) – is not currently fulfilling its purpose. Interviewees expressed real frustration at the lack of understanding of the trauma that some trafficked children have been through, how frightened they are and how this can affect their ability to give accurate, reliable, consistent evidence. A new model NRM is being piloted – we hope the changes will address these deficiencies.
- Independent advocates or guardians have an important role to play. An independent advocacy service for trafficked children is being trialled in England and Wales to ensure that the child's best interests are protected. Independent guardians will assist, protect and support child victims of trafficking in Northern Ireland and Scotland.

3) Planning focuses on the short term with insufficient consideration about the child's future and long term outcomes

- There is extensive local authority care planning but of variable quality. Even where the plans are of good quality and are based on an assessment of the child's best interests, they are focused on the 'day to day' needs of the child rather than long term plans that provide the child with stability and a route to fulfil their potential.
- Child victims of trafficking are especially vulnerable at transition points, primarily the transition to adulthood at the age of 18. This is particularly significant for those children who have temporary forms of leave and must apply to extend their leave or appeal a decision. They can find themselves with little support to do so, and remain vulnerable to exploitation and re-victimisation.

- There are no monitoring systems in place to track outcomes for children once they leave care, for child victims of trafficking who are appeal rights exhausted and face deportation, or young people who have been returned to their country of origin. This makes it virtually impossible to review most cases in order to analyse long term outcomes and ultimately to assess whether plans have indeed been 'durable'.

All stakeholders interviewed agreed that achieving a durable solution for trafficked children has to involve a range of actors and should entail a multi-agency approach. However, lead responsibility should rest with the agency responsible for the child's overall welfare. In the UK, this would mean that local authority children's services should take lead responsibility for delivering a durable solution for each child.

UNICEF UK RECOMMENDS THAT THE UK GOVERNMENT

1. Ensure that child trafficking is addressed as a child protection issue within a child protection framework

Local authorities are under a statutory duty to safeguard and promote the welfare of trafficked children, yet poor practice is impeding this. Too many of those working with these children wait for confirmation that the child has been trafficked before they assess their protection needs. This is not in the child's best interests, and destabilises the care and support available to that child. We ask the Home Office and DfE to work with representative groups such as the College of Policing, Association of Directors of Children's Services (ADCS) and the Local Government Association (LGA), as well as individual local authorities in England, to develop and deliver a comprehensive programme of training on child trafficking for the police, commissioners of children's services, child protection social workers, care teams, leaving care teams, foster carers and residential care workers.

2. Fully implement the National Referral Mechanism (NRM) reforms in order to lead to a durable solution for trafficked children

The National Referral Mechanism is a framework for identifying victims of human trafficking. When a child is suspected of being trafficked, their case is referred to the NRM for consideration. The NRM is under reform,³ which should address shortcomings identified in this research. The Home Office must raise awareness and promote the new system to the front line staff who are most likely to make contact with a trafficked child; and ensure the panels making decisions about children's cases are appropriately trained and supported. We want to see an efficient and reliable NRM in place that quickly recognises child victims of trafficking and temporarily regulates their status, immediately followed by the search for a durable solution for each child. The best interests of the child must be the leading principle used throughout the process, and should be explicitly recognised in the new NRM policy.

3. Make sure trafficked children are not punished for crimes they commit that are related to their trafficked status

It is a principle of international law that children cannot consent to being exploited. Prosecuting a trafficked child for crimes they have been forced to commit is a violation of their basic rights. Section 45 of the Modern Slavery Act 2015 provides for a defence for children who have committed an offence as a direct result of their being a victim of slavery, trafficking or exploitation. However, trafficked children will still have to pass a 'reasonable person test' in order to access the defence: this requires an adult juror to decide whether a similar child in similar circumstances would have acted in the same way. We want to see all UK trafficking legislation incorporate a non-prosecution principle to protect children from inappropriate detention, prosecution and punishment without first having to pass this test. The Crown Prosecution Service (CPS) will be working to updated legal guidance on human trafficking – this must support the non-prosecution principle for children, and be accompanied by Continuing Professional Development (CPD) training for legal practitioners and the police.

³ including the creation of Anti Slavery safeguarding leads at local authority level; streamlining the referral process for potential victims of trafficking; and setting up multi-disciplinary panels to decide on cases.

4. Establish a formal Best Interests Determination (BID) process

When a child is identified as having been trafficked through the NRM, it is time to find out which durable solution would be best for that child. A multi-agency Best Interests Determination (BID) process, undertaken within a child protection framework and that takes into account the views of all of those working with the child, the child's advocate/guardian and the child him or herself, is the key assessment tool for determining this. We recommend that the government set up a BID process that can operate using existing mechanisms: for example, local Multi-Agency Safeguarding Hubs (MASH), if they are given an expanded role that includes specific child protection responsibilities for trafficked children.

5. Ensure children's advocates and guardians are involved in durable solution decisions

Independent children's advocates (in England and Wales), and children's guardians (in Northern Ireland and Scotland) provide protection and support for trafficked children, and fulfil a preventive and supportive role for those who are at risk of being re-trafficked. They help trafficked children realise the full range of their rights, and guide them through the social care, immigration and criminal justice systems. The services are relatively new – a pilot of the independent child advocates service ends this year, with some uncertainty over whether or not it will continue. We want to see children's advocates and guardians accompanying trafficked children through the entire decision-making process, with the independent advocacy service established in Home Office regulations. Over the longer term, we want to see advocates or guardians appointed for all separated migrant children.

6. Review forms of leave available for child victims of trafficking

Planning for a durable solution is not possible until a child's immigration status has been regularised. Currently, Refugee Status and Humanitarian Protection are the only forms of leave available to trafficked children that facilitate a durable solution. However, the majority of unaccompanied asylum-seeking children are granted UASC, or temporary, leave which finishes when the child reaches 17½, and prevents the local authority from making any long-term plans with or for the child. We ask the Home Office to review and revise the current forms of leave and ensure that an additional form of leave is available to those children who are formally recognised as child victims of trafficking through the NRM, and for whom a BID establishes that it is in their best interests to remain in the UK. Under these circumstances, we recommend that they are given indefinite leave to remain.

7. Invest in research to find out what happens to child victims of trafficking

Despite the government's increased focus on modern slavery, trafficking and exploitation, there are still significant research gaps that make it difficult to know: who and how many children we may be failing to identify and support; whether those who are identified are able to access the full range of their rights; and what happens to them when they become adults – in other words, whether a durable solution is being found for these children. We ask the DfE to review how well the existing statutory guidance on UASC and trafficked children is being used by local authorities. We urge the Home Office to collect and publish data on a range of areas: for example, what immigration status has been given to child victims of trafficking; how many and in what circumstances children are returned to their country of origin or relocated to a third country; and how many children are reunited with their families.

CONCLUSION

A durable solution is more than just a matter of immigration status: it requires a multi-agency approach involving all relevant organisations, and above all requires a child protection response.

The establishment of the Global Partnership to End Violence Against Children is an opportunity for all levels of government in the UK to prioritise child protection and work together with partners to find solutions for tackling violence, including child trafficking. At local level, this would include social care, health, education and the police, but with local authority children's services in the lead. At national level, both the Home Office and the Department for Education (DfE) (in England) have key roles to play: the Home Office in relation to the operation of the NRM, the appropriateness of the different categories of immigration status, and the immigration decision-making process itself; and the DfE in relation to the framework for local authority permanence planning (leading to a durable solution) and children in care/child protection service provision.

ABOUT UNICEF

Unicef is the world's leading organisation for children, promoting the rights and wellbeing of every child, in everything we do. Together with our partners, we work in 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere.

As a registered charity, Unicef UK raises funds to protect children in danger, transform their lives and build a safer world for tomorrow's children. Unicef UK also lobby and campaign to keep children safe around the world, and run programmes in UK schools, hospitals and local authorities.

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