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Session 2014-15

Modern Slavery Bill

Written evidence submitted by Dr Andrew Rowland (MS 05)

1.0 SUMMARY

1.1 Turning something as important as child trafficking and exploitation into a headline-grabbing piece of legislation, by using the emotive term 'slavery', is only appropriate if the substance of that legislation is comprehensive enough, and detailed enough, to really make a difference to the people it is designed to protect whether through punishment of offenders or prevention of offences. In its current form the Modern Slavery Bill 2014 lacks that detail in some places and it is beholden upon everyone involved in our parliamentary processes to make the changes I believe are necessary to improve it into powerful primary

legislation that will be more likely to better protect children from exploitation and trafficking, and appropriately punish those people responsible for these heinous crimes against society.

2.0 TITLE

2.1 In order to make absolutely clear that this Bill is not just about "Slavery" (which is an emotive term and which is inadequately defined in the Bill) the title ought to be changed to:

2.1.1 ***"Human Trafficking, Exploitation and Modern Slavery Bill"***

2.2 If enacted the primary legislation should become:

2.2.1 ***"Human Trafficking, Exploitation and Modern Slavery Act 2014"***

3.0 PREAMBLE

3.1 This ought to be changed to:

3.1.1 ***"A BILL to Make provision about slavery, servitude, exploitation and forced or compulsory labour; to make provision about human trafficking; to make provision for an Anti-slavery Commissioner; and for connected purposes related to adults and children"***

4.0 Section 1(2)

4.1 This is particularly problematic for a number of reasons. Section 1 currently defines slavery in accordance with Article 4 of the Human Rights Convention (HRC) [1] however Article 4 doesn't actually define slavery in sufficient detail therefore it is not possible to construe section 1 in accordance with Article 4 of the HRC in any meaningful way, leaving this Modern Slavery Bill 2014 without a clear definition of slavery.

4.2 Article 4 reads as follows:

4.2.1 "Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from

such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Given the inadequate definition of slavery and servitude it is, in my view, likely that the cases which will be recognised or dealt with will be the headline-grabbing ones, well publicised in the media, rather than the majority of cases where the evidence may be somewhat weaker or the cases themselves may not be as headline-grabbing. It is therefore likely to be the case that professionals may still not recognise cases they are dealing with as 'slavery' or other offences dealt with under this proposed legislation. Although this Bill is clearly intended to be a criminal Bill it is important that there is consistency with civil protection rights for

children, such as under the Children Act 1989, such that the cases where evidence is weaker, but children are still at risk, are properly dealt with.

4.3 At present the Bill is far too vague and I would prefer a clear definition of slavery or servitude to be included within it, for example as shown below:

4.3.1 *"the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"* (*Siliadin v. France*, § 122).

4.3.2 *"a particularly serious form of denial of freedom" including "in addition to the obligation to perform certain services for others ... the obligation for the [person] to live on another person's property and the impossibility of altering his condition"* (*Siliadin v. France*, § 123).

5.0 Section 1(4)

5.1 This should be revised to include an explicit statement about persons who may have a disability. I suggest rewording as follows:

5.1.1 *(4) For example, regard may be had to any of the person's personal circumstances (such as their age, family relationships, the presence of any disability, and any mental or physical illness) which may make the person more vulnerable than other persons.*

5.2 As an aside, and I do not know how to deal with this in suggested re-wording, it is my view that those people who are aged under 18 are almost certainly always more vulnerable than most other persons so I am a little uneasy about the potential inference which could stem from Section 1(4) that people of a young age may not always be vulnerable.

5.3 I would prefer this section to make clear that persons below the age of 18 are vulnerable, for a whole variety of reasons, and hope you will be able to find an alternative form of words to highlight this.

6.0 Section 3(2)

6.1 This is too weak. It refers back to section 1 which, as discussed above, is non-specific. Section 3 therefore needs tightening. This could be resolved by revising Section 1 as described above. As currently worded it will be difficult for professionals to know whether or not the behaviour is slavery or servitude and it will be difficult for appropriate guidance to be developed which is consistent across England and Wales. Consistency is incredibly important in child protection cases and, if for that reason alone, Section 1 and, by reference, Section 3 ought to be more fully detailed.

7.0 Section 3(6)(a)

7.1 This must have a definition of 'young' to make explicitly clear that the definition of a child is someone who has not reached their 18th birthday in accordance with the UN Convention on the Rights of the Child.

7.2 I suggest rewording this section as follows:

7.2.1 *(a) he or she is mentally or physically ill or disabled, is young (aged under 18 years of age) or has a family relationship with a particular person, and*

8.0 Section 4

8.1 Unfortunately this section currently just applies to "trafficking" and excludes "exploitation, slavery, servitude and forced or compulsory labour". This Section therefore ought to refer not just to Section 2, as it does currently, but to Sections 1 and 3 as well.

9.0 Section 15(3)

9.1 This Section cross-references Schedule 2 which purely deals with trafficking. This section needs to be reworded and re-cross-referenced so that it includes proper references to all of the definitions of offences set out in the proposed revised Title I have set out above.

10.0 Section 35(2)

10.1 This is too weak. At present the provision of information, education or training is optional under this section. This must to be changed such that the provision of information and standardised educational or training material(s) is **mandatory** in order that duplication of effort at a regional or local level is minimised and so that standardisation of education and training across England and Wales is more likely to be facilitated.

11.0 Section 39

11.1 This needs to be tightened to cross reference Section 2 (and not just 1 and 3).

12.0 Sections 42(1)(a), 42(1)(b) and 42(1)(c)

12.1 These need to be revised to include exploitation as at present the mandatory guidance under this section applies purely to trafficking and slavery.

13.0 Section 43(3)

13.1 This needs to be revised to include exploitation, servitude and slavery (not just trafficking).

14.0 Section 44

14.1 This section is too unclear – it needs to explicitly state whether or not the National Health Service is one of these public authorities or if the definition is to be released by another legal means. There are arguments for and against including the NHS here – but that is a separate discussion

15.0 I hope The Committee members find the above submission helpful – please do not hesitate to contact me if I can be of any more assistance.

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[1] <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

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