



Children Outside the UK investigation: Civil Orders Case Study

DECISION ON SCOPE

Introduction

1. In March 2018 the Inquiry published an Update Note announcing that the next phase of the Children Outside the UK (**COUK**) investigation would be as follows:

“...a Case Study considering the adequacy of the civil framework for the prevention of, and notification to foreign authorities of, foreign travel by individuals known to the UK authorities as posing a risk to children. This framework includes the powers to make Foreign Travel Orders (FTOs) and Risk of Sexual Harm Orders (RSHOs) that were set out in the Sexual Offences Act 2003; as well as Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) provided for by the Anti-Social Behaviour, Crime and Policing Act 2014”¹.

2. Shortly before a Preliminary Hearing on 6 June 2018, written submissions were made by the British Council on the scope of the Case Study. The other Core Participants were given the opportunity to make submissions in writing after the hearing and ECPAT/CRI did so, the same having been received on 24 June 2018. Those submissions have now been considered and this is my Decision in response to them.

The context for the submissions

3. The following is the definition of the scope of the overall COUK investigation²:

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<https://www.iicsa.org.uk/key-documents/4413/view/COTU%20Investigation%20March%202018%20Update%20Note.pdf>

² <https://www.iicsa.org.uk/investigations/the-protection-of-children-overseas?tab=scope>

“1. The Inquiry will investigate the extent to which institutions and organisations based in England and Wales have taken seriously their responsibilities to protect children outside of the United Kingdom from sexual abuse. The investigation will incorporate case specific investigations, a review of information available from published and unpublished reports and reviews, court cases, and investigations.

2. In investigating the extent to which institutions have taken seriously their duty to protect children abroad, the Inquiry will consider, in particular:

2.1 whether government departments, public authorities, private and/or charitable institutions based in England and Wales have taken sufficient care to protect those children they may have sent or placed abroad;

2.2 whether the armed forces, government departments, public authorities, private and/or charitable institutions based in England and Wales have taken sufficient care to ensure that their employees do not pose a risk to children living abroad and/or whether they have taken appropriate steps in response to allegations that their employees were involved in the sexual abuse of children abroad;

2.3 whether the responses of government departments based in England and Wales to reports of institutional failures to protect children from sexual abuse in overseas territories and crown dependencies have been appropriate;

2.4 whether law enforcement agencies, the criminal justice system, and any other public authorities have been effective in preventing foreign travel by, or notifying foreign authorities of, individuals known to the UK authorities as posing a risk to children.

The inquiry will consider the appropriateness of the statutory and regulatory framework relevant to child sexual abuse abroad, including in relation to:

3.1. the operation of the statutory vetting and barring regime by organisations recruiting individuals to work abroad;

3.2. monitoring of child sexual abusers by the criminal justice and law enforcement agencies in England and Wales;

3.3. civil orders, including foreign travel orders and risk of serious harm orders provided by the Sexual Offences Act 2003; and sexual offences prevention orders provided by the AntiSocial Crime and Policing Act 2014”.

4. The first phase of the COUK investigation comprise a Case Study on the Child Migration Programmes. Public hearings in that phase were held in two parts: the first from 27 February 2017 to 10 March 2017 and the second from 10 to 21 July 2017, with closing submissions on 26 July 2017. The Inquiry's report on the Case Study on the Child Migration Programmes was published on 1 March 2018. This Case Study has met the requirements of paragraph 2.1 and parts of paragraphs 2.2 and 2.3 of the scope of the COUK investigation.
5. The Update Note referred to above stated that the Civil Orders Case Study will consider, in particular:
 - a. the circumstances in which relevant orders can be made and what they seek to achieve;*
 - b. the extent to which the powers to make such orders have been used since they were introduced;*
 - c. the practical impact of such orders on known offenders when they have been used; and*
 - d. whether there is a need for change in the framework applicable to these orders”.*
6. As the above makes clear, the Civil Orders Case Study is intended to be a focussed exercise, which investigates the efficacy of the civil orders regime as it stands.
7. The Update Note stated that this Case Study will discharge paragraph 3.3 of the published scope of the COUK investigation.
8. By a series of Determinations made before and after the Preliminary Hearing, I have recognised five Core Participants in the Civil Orders Case Study, namely: **The National Crime Agency, The Home Office, The British Council, Every Child Protected Against Trafficking UK (ECPAT) and Child Redress International (CRI).**
9. The Case Study has been listed for a 5 day Public Hearing in February 2019.

Submissions on the scope of the Civil Orders Case Study

10. Submissions on the scope of the Civil Orders Case Study have been made by the British Council and also by ECPAT/CRI jointly. Some of the points made overlap and some are different.
11. ECPAT/CRI argue that the issue of whether law enforcement agencies, the criminal justice system, and any other public authorities have been effective in preventing foreign travel by, or notifying foreign authorities of, individuals known to the UK authorities as posing a risk to children (as set out in paragraph 2.4 of the COUK scope) is clearly relevant to the Civil Orders Case Study.
12. Both the British Council and ECPAT/CRI argue that the Inquiry should expand the scope of the Civil Orders Case Study to include the operation of the statutory vetting and barring regime by organisations recruiting individuals to work abroad (as set out in paragraph 3.1 of the COUK scope).
13. ECPAT/CRI argue that the Inquiry should expand the scope of the Civil Orders Case Study to include:
 - (i) How the UK will implement the Lanzarote Convention in practice;
 - (ii) Compliance with the UK's obligations under EU law, in particular Directive 2011/92/EU which refers to measures against advertising abuse opportunities and child sex tourism;
 - (iii) The use of the Sexual Offences Act 2003, s.72, which creates an extra-territorial jurisdiction in respect of child sexual abuse; and
 - (iv) The issue of whether the responses of government departments based in England and Wales to reports of institutional failures to protect children from sexual abuse in overseas territories and crown dependencies have been appropriate (as set out in paragraph 2.3 of the COUK scope).
14. Finally, both the British Council and ECPAT/CRI question the extent to which the Civil Orders Case Study will consider the wider issue of whether institutions based in

England and Wales have taken sufficient care to ensure that their employees do not pose a risk to children living abroad (as set out in paragraph 2.2 of the COUK scope).

Consideration of the issues and decision

(i) *The paragraph 2.4 issue*

15. I deal first with ECPAT/CRI's submission in relation to paragraph 2.4 of the COUK scope. Although the Update Note was explicit that the Civil Orders Case Study was intended to discharge the specific issues relating to civil orders set out in paragraph 3.3 of the published scope of the COUK investigation, it is clear that the general issue set out at paragraph 2.4 provides the wider context for and is relevant to the civil orders issue. I therefore agree that paragraph 2.4 is relevant to the Civil Orders Case Study.

(ii) *The proposed additional topics*

16. In considering whether to expand the scope of the Civil Orders Case Study to include the four topics summarised at paragraphs 12 and 13 above, I have had regard to the following factors: **(a)** the extent to which the proposed additional topics are expressly included within the current definition of the COUK investigation's scope; **(b)** the coherence of the Case Study if the proposed additional topics are included in its scope; and **(c)** general proportionality/timing issues.
17. **(a) COUK scope**: In my view all of the potential topics are either expressly referred to within the current definition of the COUK scope, or could properly be regarded as sub-issues within some parts of the existing scope. For example, the extra-territoriality issue could properly be regarded as included within the overarching scope issue of whether authorities within England and Wales have taken seriously their duty to protect children abroad from sexual abuse. Applying this criterion, therefore, does not provide a clear basis for deciding to include or exclude any of the proposed topics from this Case Study as all would be permissible in terms of the overall COUK scope.

18. **(b) Coherence:** As set out above, the Civil Orders Case Study is relatively narrowly focussed on assessing the efficacy of the Civil Orders regime. If the scope of the Case Study is to be expanded, it is important to ensure that the points added to the scope do not render the Case Study an incoherent “patchwork” of unrelated investigations.
19. **(c) Proportionality/timing:** The Civil Orders Case Study is scheduled to be heard over five days in February 2019. Although the time available is sufficient for the Case Study as it presently stands, it remains limited, both in terms of the time available to investigate and prepare for the hearing, and the time available at the hearing itself. It is accordingly important an expansion in the scope of the Case Study does not undermine its efficacy to the extent that the evidence cannot be properly considered. I have a duty to ensure that the Inquiry's work is carried out without unnecessary cost and am mindful of the fact that by the end of the February 2019 hearing, this particular investigation will have had five weeks of hearing time while other investigations are being progressed effectively with less..
20. Applying factors **(b)** and **(c)** to the list of proposed additional topics, I have concluded that the scope of the current Civil Orders Case Study should be expanded to include issues related to the statutory vetting and barring regime, and issues related to the use and efficacy of section 72 of the Sexual Offences Act 2003. I have reached this decision because:
- (i) These are both issues related to the operation of discrete legal and policy regimes;
 - (ii) In the case of the statutory vetting and barring regime, I accept the submission of the British Council that (a) as a matter of practicality, this regime is likely to operate alongside the civil orders regime, as a further way in which those suspected of posing a risk to children are prevented from working with children abroad; and (b) if the Inquiry considers the civil orders regime in isolation it may not obtain a full picture of the available legal frameworks on this issue. On that basis this issue fits sensibly within the current Civil Orders Case Study scope;

- (iii) In the case of section 72, I note the submission of ECPAT/CRI that their understanding is that this section is currently under-utilised³, and if so, this is a further potential example of the existing criminal justice framework not being properly deployed to protect children abroad, which fits coherently with the current Civil Orders Case Study scope that may raise similar “*under-utilisation*” issues; and
- (iv) Overall I am satisfied that it is realistic and proportionate to explore these issues within the current Civil Orders Case Study, provided that the obtaining of the additional evidence and the hearing itself is properly focussed.

21. My conclusion is different in relation to the remaining topics which are proposed to be added. In my view:

- (i) The question of how the UK will implement the Lanzarote Convention in practice is not one capable of discrete and proportionate consideration within the context of this Case Study, but is better regarded as an ongoing issue that may touch on several elements of the Inquiry’s work;
- (ii) The issue of compliance with the UK’s obligations under EU law, in particular Directive 2011/92/EU in respect of advertising abuse opportunities and child sex tourism, as important as it no doubt is, is not one that I consider fits coherently or proportionately with the current Civil Orders Case Study; and
- (iii) The issue of whether the responses of government departments based in England and Wales to reports of institutional failures to protect children from sexual abuse in overseas territories and crown dependencies have been appropriate (as set out in paragraph 2.3 of the COUK scope) is factually quite distinct from the civil orders issue, and to add this aspect to the current Civil Orders Case Study would render it factually disjointed. Proportionality issues are also pertinent here.

(iii) *The paragraph 2.2 issue*

³ See paragraph 2.5 of the ECPAT/CRI submissions dated 25 June 2018

22. The Inquiry is conscious of the significance of the wide issue of whether government departments, public authorities and charitable institutions have taken “*sufficient care*” to ensure that their employees do not pose a risk to children living abroad (as set out in the first part of paragraph 2.2 of the COUK scope), not least in light of the recent issues that have arisen, very publicly, about the work of certain charitable organisations abroad. My view is that the civil orders regime, and the barring and vetting regime, are two ways in which the risk posed by employees travelling abroad can be addressed. Accordingly the current Case Study will go some way to exploring the paragraph 2.2 issue, but it is not intended that the current Case Study will be a broad or exhaustive consideration of it.

Professor Alexis Jay OBE
Chair, Independent Inquiry Child Sexual Abuse

2 August 2018