



BASW Position Statement - The Sexual Exploitation of Children and Young people Cared for Away from Home

BASW is the Professional Association for Social Workers in the United Kingdom. We seek to promote best practice in social work and to secure the well-being of social workers.

BASW is frequently asked to explain the position of the social work profession on current issues. These position statements seek to explain positions that we express on issues that arise frequently. They comprise statements in **bold** and commentary in *italics*. The commentary seeks to reflect our Code of Ethics, the views of our members expressed through our democratic structures, and our understanding of social work internationally as a practice-based profession and an academic discipline.

This position statement is about Child Sexual Exploitation. This term has been used in particular recently to refer to the systematic exploitation of children within the care system. This statement serves as a reminder that child sexual exploitation takes many other forms, as well as addressing that particular form of child sexual exploitation.

1. Child sexual exploitation can take place anywhere.

Commentary: *While the sexual exploitation of children within the care system has been the focus of a number of enquiries there is a risk of losing sight of the fact that it is not confined to care settings. Sexual abuse does take place in children's own homes and in homes that children visit. It does take place away from home but where children are still living at home but parental care cannot or does not protect them from it. It does take place in institutional settings other than the care system.*

When there is a spotlight on the sexual exploitation of children within the care system, is important to recall that the child protection system exists to protect children from significant harm including sexual harm. Much social work intervention is unsung success protecting children from that harm. Equally, Social work has a moral, ethical and legal responsibility to protect children and young people in all settings and therefore including care settings. It is never acceptable to ignore evidence of abuse.

2. It is necessary to acknowledge the particular vulnerability to exploitation, of children within the care system.

Commentary: *The UN Convention on the Rights of the Child which we seek to uphold*

(BASW Code of Ethics at 2.1) asserts that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection...". For some children, the circumstances to which they were exposed prior to entering the care system makes them subject to particular vulnerability. For some children, lack of access to the benefits of a family life makes them subject to particular vulnerability. For some children, the fact that their rights in care are mediated through State agents and processes makes them subject to particular vulnerability.

Children and young people cared for away from home frequently have disturbed home backgrounds and other life experiences which result in difficult and challenging behaviour and use of language which can be difficult to contain and anti-social. They can be 'delinquent' and 'wilful', provoking controlling responses from those in authority. The origins of such behaviour need to be understood if they are to be helped to make a positive contribution to society.

3. Acknowledging the particular vulnerability to exploitation of children within the care system, care should be taken to factor in those risks when making decisions about the removal of children into the care system, or their continued place in it.

Commentary: *Human rights are central to social work (IFSW Definition of Social Work). Specifically, we uphold the Universal Declaration of Human Rights and associated UN declarations (BASW Code of Ethics at 2.1). Social workers play an important role in protecting children from harm, and work to legal thresholds which grant relevant powers to intervene. However, even where the relevant threshold has been crossed care needs to be taken not to remove children into the care system too readily.*

First, the human rights principle of proportionality comes into play, because "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child" (UN Convention on the Rights of the Child, Article 9). We believe that removal cannot be said to be necessary when the balance of risk appears to be that the child will be exposed to greater risk within the care system than from the harm from which it is sought to protect them. We are mindful that in some child sexual exploitation cases, parents have spoken out their concern on exactly this.

Second, the need to protect children from harm is not the only human rights issue in play when the threshold is crossed. A child's right to the benefits of family life (UN Convention on the Rights of the Child, preamble) is potentially infringed by a lengthy stay in the care system without access to a semblance of family life. We agree with courts which have held that this so-called "statutory orphanage" is itself a breach of human rights. "Whenever a person's rights are compromised, social workers must always consider the rights-basis upon which this is permitted, and continue to give effect to human rights to the maximum possible extent." (BASW Human Rights Policy, page 21)

4. Curtailment of the risk of child sexual exploitation by curtailment of the child's freedoms potentially infringes the human rights of children. We commend the approach taken by some local authorities of focussing attention on curtailing the freedoms of those men who seek to exploit children in the care system.

Commentary: There are two parts to this statement. The first represents important acknowledgement of a problem that the rights of children include freedoms to be protected as well as the protection of the child from harm. The second highlights and condones a solution to that problem.

As to children's freedoms, we consider some commentators on child sexual exploitation have too readily asserted that since child sexual exploitation is criminal harm, those who have failed to protect children from it must be at fault (see statement 4 below). Children are entitled to increasing freedom as they grow in age and maturity, and it can be agonisingly difficult to allow children to develop and grow their freedoms while also protecting them from harm. In some child sexual exploitation cases, children are formally deprived of their liberty – locked up – to protect them from harm, but this is a stark reminder that in protecting children from harm, not only freedoms, but sometimes liberty itself (contrary to Article 3, UN Universal Declaration of Human Rights), has been removed from them. BASW will not support a breach of the child's human right to liberty for the purposes of protecting a child from harm. (See BASW Human Rights Policy, page 21 on the responsibilities of “social workers who by reason of their statutory setting or their legal obligations, have a responsibility on behalf of the State to give effect to the State’s human rights obligations”.) Children – understandably – can feel that a curtailment of their own freedoms feels like a punishment.

It is in this context that we welcome the approach of curtailing the freedoms of individuals who groom for or carry out acts preparatory to child sexual exploitation. We are aware of criticisms that this curtails the human rights of adults against whom no criminal intent might have been proven, but (a) we are talking about qualified rights and a balancing exercise and it is preferable to curtailing the human rights of the children concerned; (b) it is entirely right and proper that the protection of children from the harm of child sexual exploitation takes place within a civil framework and is not hampered by a need to prove, in a criminal framework, intent, guilt beyond reasonable doubt, or that a crime has already occurred; (c) there is no human right that protects grooming or carrying out of acts preparatory to child sexual exploitation, and we would deplore any attempt to invoke human rights to defend such activity. We therefore support the development and growth of civil remedies directed at potential perpetrators to protect children from child sexual exploitation.

5. The management of care facilities must be respectful of children’s rights and open to free expression of concerns by all staff. Employers must have well publicised and respected whistle-blowing arrangements.

Children and young people have a right of access to advocacy and support to enable them to challenge poor care and abuse. Social workers in practice and management should always be alert to the risk of abuse whilst also promoting a professional partnership with care providers.

Social workers have a duty to challenge abuses of all kinds and have a right to expect management support in doing so. This includes political support when the social worker is employed in a public service. (BASW Code of Ethics at 2.2 “Social workers have a duty to bring to the attention of their employers, policy makers, politicians and the general public situations where ... policies and practice are oppressive, unfair, harmful or illegal”; BASW Whistleblowing Policy at page 15 “Social workers should expect their employers to proactively promote best practice whistleblowing arrangements that encourage open workplaces, help staff know when to raise a concern, how, with whom and give access to independent advice”.)

6. Effective protection of children within the care system is difficult; it requires dedicated and committed practitioners. The threat to create a specific criminal offence related to “wilful neglect” by practitioners is counter-productive and should not be pursued.

Commentary: *Social workers are subject to regulatory standards. BASW supports regulatory standards for social work (BASW/IFSW Policy on Effective and Ethical Working Environments for Social Work p11). In the UK, these standards are set by regulatory Councils in each of the four nations. Being accountable means both that social workers' decisions should be subject to challenge through legal processes, and that social worker's competence and conduct should be subject to review through regulatory processes. Existing regulatory frameworks in all four nations both allow for regulatory action to be based upon proven criminal convictions and also set significantly higher standards than the criminal law and allow for regulatory action to be taken for failure to meet those higher standards.*

However, social workers in statutory settings are also subject to (a) instructions from their employers which may or may not comply with the professional standards to which they aspire (see BASW Code of Ethics at 2.2); and (b) decisions, including resource decisions, taken within the democratic structures of central and local government (see BASW/IFSW Policy on Effective and Ethical Working Environments for Social Work at pp5-6 for a detailed discussion).

There is adequate protection from poor practice within existing professional regulation and existing criminal law. Existing employment and democratic structures already constrain good social work practice. The creation of an offence of wilful neglect by practitioners offers no protective benefits to children at risk of child sexual exploitation. By seemingly scapegoating practitioners, a new criminal offence is likely to divert attention away from

the problems of the structures within which social workers seek to protect children, and to deter suitable practitioners from entering the profession. BASW firmly opposes the enactment of legislation to create any such criminal offence.

Adopted by BASW Policy, Ethics and Human Rights Committee _____ 2015