**LIABILITY OF HOTELS AND THE HOSPITALITY INDUSTRY IN THE AREA OF CHILD EXPLOITATION**

**WHAT SHOULD THE INDUSTRY KNOW AND WHAT MEASURES SHOULD BE CONSIDERED TO PROTECT CHILDREN**

**DISCUSSION PAPER**

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1. **THE PURPOSE OF THE PAPER**

The intention is to set out in somewhat stark terms what any hotel, institution, local authority, scout camp or other organisation concerned with the provision of accommodation to children and vulnerable young persons will face if confronted with a claim in respect of exploitation. It is to be read in conjunction with the first paper on liability for child exploitation.

It is important to appreciate the reality of exploitation, graphic as it might appear when reading the judgments in the criminal cases or subtle in the case of children who might develop an infatuation as a result of grooming or otherwise, which is then abused by those who are able to take advantage of the child by subtle manipulation under any number of guises designed to conceal their activities from those who have the duty of caring for the child.

This paper will quote in extenso from reports which demonstrate for how long and to what extent notice of the problem has been known, the model for the exploiter, the exploited child, types of exploitation, discrete issues as to liability including the liability of tour operators and scout camps, local non UK standards and how they might impact on a UK based industry, procedures to be adopted to counter exploitation and the ECPAT CODE and finally the consequences of failure and the results of success.

1. **THE CRIMINAL CASES AND THE REALITY OF CHILD EXPLOITATION**

The reality of what can happen to children who are sexually abused can be seen in but two of the cases which have come before the criminal courts.

**REGINA V ALI 2015 EWCA CRIM 1279**

The defendants were convicted in May 2014 of various offences under the Sexual offences Act 2003 including an offence under S58 (1). They received sentences of 20 years imprisonment.

By [section 58 (1) Sexual Offences Act 2003](http://login.westlaw.co.uk/maf/wluk/app/document?src=doc&linktype=ref&context=95&crumb-action=replace&docguid=ICEAF5820E45211DA8D70A0E70A78ED65) :

*“Trafficking within the UK for sexual exploitation*

*(1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—*

*(a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or*

*(b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.”*

The Court described the victims’ experiences.

*“In brief, the allegation was that the defendants targeted young girls from the Peterborough area, often from troubled backgrounds, whom they befriended and groomed for sexual purposes. They drove the victims to a variety of out-of-the-way locations where it was alleged they sexually assaulted or raped them, usually having first plied them with alcohol.* ***On two occasions, rooms were booked at hotels where they stayed overnight with a number of girls*** *for the purpose – as suggested by the prosecution – of holding sex parties. The sexual activity on one of these occasions was said to have taken place in the presence of a 14 year-old girl.* ***During these hotel visits*** *the appellant Ali took indecent photographs, including one sequence when Ashraf urinated over a girl in a shower and another of a girl having oral sex. The prosecution alleged that the defendants deliberately targeted and groomed these girls with the aim of using them for sexual purposes. They were selected because of their circumstances, including such factors as their ages, troubled backgrounds and humdrum lives which made them susceptible to the sexual advances of older males, who plied them with alcohol, flattered them, drove them to various locations and took them to “parties” at hotels. At the core of the prosecution's case was the allegation that the victims became sexually compliant, and that any apparent consent on their part was not genuine or real”.*

One victim described the scene in the hotel.

*“She describes them being out and her description overall of what takes place in the* ***hotel room*** *is of them drinking, showers being taken, her being ill, but as I say nothing, she says nothing sexual had taken place with her.*

*She was then interviewed on 19th February and she spoke about what is described as being missing from her previous interview. When getting alcohol that she described, one of the men had, to use her description, grinded up against her. She'd got back into the car and said to her friends that she wanted to go home, she didn't like it…*

***They ended up going to the (an hotel) at Peterborough****. He'd asked them to go in one by one and said to [SG] when the drinks were being poured, “Let's get drunk and forget about it.” The person who had been doing the grinding up to her was Mr Nice [the appellant]….*

*At one point in the night, she was in the toilet. One of the men came into the bathroom, turned on the shower and then started to undress her and that's when he put her in the shower. Afterwards, she got out of the shower and so did he. She had said to [LR] to come to the bathroom. She felt absolutely dirty and disgusting, so she had a shower with [LR], but [LR] she said was in quite a party mood. She was quite happy and thought it was all fun….*

*Afterwards, she was being sick as she was disgusted. She drank quite a bit. After that, they went off and their iPhone was left on the floor. She had said to [SG] that she wanted to pay them back. She had picked up the phone and climbed out of the window. There was a McDonald's and they were going to get some food and she left the phone under a rock. When they got back from McDonald's, they went to sleep; the girls on the floor, and they, the men, had slept on the beds….. It was quite late when Aslam came in.* ***Then a man came knocking on the door and said they had to go as they had only booked it for one person. They said to us to climb out of the window – told us to open the window, go through and climb back through….”***

**KARRAR, JAMIL ET AL V REGINA [2015] EWCA Crim 850**

*“The case involved the exploitation and corruption of children by a group of men in the Oxford area. The applicants targeted vulnerable girls as young as eleven and with troubled upbringings. Once they had recruited and groomed them, the girls would be sent out to recruit others. The applicants used a number of ways to groom the girls: showing them apparent love and affection, giving them gifts, and supplying them with drugs such as cannabis, cocaine, and heroin. They would also exercise extreme physical and sexual violence upon them and threaten them should they ever seek to escape. Six of the girls showed enormous courage in giving evidence against their abusers…. We can only give a flavour of the appalling and sustained abuse they suffered. It consisted of the men themselves engaging in sexual acts with the girls, alone or with others; and the girls being taken to other men to have sex with them often in groups and often in return for money. It included vaginal, anal and oral rape. It involved the use of a variety of objects such as knives, meat cleavers, baseball bats and various sex toys that caused physical injury. It was often accompanied by humiliating and degrading conduct such as the girls being bitten, scratched, urinated upon, suffocated, tied up, and burnt…(part omitted on the ground that it is so appalling as to be capable of distressing the reader) ….From the age of thirteen she was taken to empty houses,* ***guest houses (including the…. Guest House) or hotels****, all within the Oxford area, where she would be raped vaginally by the Dogars and Jamil. Akhtar Dogar orally and anally raped her. Jamil would force her to perform oral sex upon him…. The offending ended shortly after AB's fifteenth birthday by which time she was mentally and physically exhausted…… She has been diagnosed with Post-Traumatic Stress Disorder. She suffers from bouts of anxiety and depression, self-loathing, has difficulty in relationships and has completely lost her self-confidence. She missed out on much of her education. Her parents have seen her change from a bright, intelligent, loving, open little girl into a sullen, secretive, evasive and frightened one who has lost all ambition for the future. The abuse has had a devastating impact on them too….. EF has now totally changed. She is ultra-fearful, cautious and unable to enjoy the sort of activities a young person should. She suffers from nightmares, panic attacks, flashbacks and depression. Although as a child she cannot bear any responsibility for her abuse, she feels that she carries a great burden of shame and embarrassment. The defendants' actions have also taken their toll on her mother, who used to roam the streets night after night searching for her child. As a result of the threats she has been forced to leave Oxford…….The applicants took vulnerable young girls and treated them in a depraved, sadistic and brutal fashion; not content with using them as their own sexual objects they encouraged others to do the same, often for money. The applicants treated the girls as less than human. It should be remembered also that the offences of which the applicants were convicted involved the commission of numerous other offences, many of which are grave in their own right. They include offences not far removed from torture, supplying class A drugs to children, and false imprisonment.”*

1. **THE EXTENT OF THE PROBLEM**

It is estimated that 150 million girls and 73 million boys under the age of 18 years, experience sexual exploitation or other forms of sexual violence according to the **UN GLOBAL STUDY ON VIOLENCE AGAINST CHILDREN**.

**THE INTERNATIONAL LABOUR ORGANISATION** estimates that approximately 5.5 million are being exploited in forced labour including forced sexual exploitation.

There are an estimated 100,000 children in the USA who are victims of sex trafficking and 300,000 who are at risk. Over 4000 children in New York City were found to be victims of sexual exploitation.

**THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN** received over 500,000 reports of sexual exploitation in 2013.

1. **UNICEF AND THE HOTEL INDUSTRY**

*“The first World Congress against Commercial Sexual Exploitation of Children was held in Stockholm in 1996. Since the first World Congress, there has been an increase in academic and NGO involvement in work against the sexual exploitation of children (SEC). In its earliest stages, much of this work focused on the extent and nature of sexual exploitation of children and the extent to which the tourism industry was to blame for the perceived rise in incidents. The core assumption driving much of the early work appeared to be that sex exploiters were Western men, and occasionally women, travelling from richer countries to lower income countries in Africa, Southeast Asia, the Caribbean, and Latin America in order to abuse children and indulge in behaviour that would be severely stigmatized and penalized in their home countries.*

*Responses arising from these assumptions included a strong focus on awareness-raising about the existence of sexual exploitation of children in travel and tourism and an emphasis on better law enforcement. Recognising that the legal systems in many lower income countries remain somewhat weak, criminal justice efforts included a push for extra-territorial legislation and the prosecution of tourists, predominantly Western tourists, in their home countries.*

*Subsequent World Congresses in Yokohama (2001) and Rio de Janeiro (2008) have widened the discussion to acknowledge the involvement of business and domestic travellers in the sexual exploitation of children. The Rio Congress strongly highlighted the responsibilities and accountability of the travel and tourism sector and both the Rio Declaration and Call to Action specifically mention The Code. One consequence is an increased focus on prevention of the use of hotels and other tourism services for the sexual exploitation of children. This goes beyond information provision and recognises a role for the travel and tourism industry in actively helping to prevent their premises or services being used for the sexual exploitation of children. This role has two potential impacts. The first is a practical impact in terms of reducing the possible venues in which travellers can exploit children and increase the likelihood of case detection. The second is a normative impact, with hotels and other tourism services working together to highlight that sexual exploitation of children is repugnant, unacceptable and contrary to the values held by the tourism industry. “*

**UNICEF(ASSESSING THE CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM: DISCUSSSION PAPER UNICEF RESEARCH CENTRE FLORENCE 22/2/2012)**

1. **THE CHILD**

*“The fact that sexual exploitation of children refers to anyone under 18 is not always widely understood or accepted, in particular when it comes to adolescent girls. Indeed, notwithstanding international norms, the perception of a child as being someone under 18 years of age is not universal. Further, the age of consent varies markedly across countries and cultures, including in relation to whether or not the child in question is married. In some countries, the age difference between those having sex is also taken into account. Taken together, these factors pose some challenges in terms of the contrast that may arise between what is condemned by international standards and what is accepted by different cultures. Such contrast may well impact on the likelihood of tourism service providers to identify and report cases of sexual exploitation of children close to the age of 18”.* **(UNICEF)**

1. **SEXUAL EXPLOIATION**

There are some 71 offences which might be committed on children and are defined in the Sexual Offences Act 2003.

In broad terms and according to **“WORKING TOGETHER TO SAFEGUARD CHILDREN”** sexual abuse is defined as follows:

*“Sexual abuse involves forcing or enticing a child or young person to take part in sexual activities including prostitution, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative (eg rape, buggery or oral sex) or non penetrative acts. They may include non contact activities such as involving children in looking at or in the production of sexual online images, watching sexual activities or encouraging children to behave in sexually inappropriate ways”*

*“Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive something (eg food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing and/or another or others performing on them, sexual activities. Child sexual exploitation can occur through the use of technology without the child’s immediate recognition; for example being persuaded to post sexual images on the internet/mobile phones without immediate payment or gain. In all cases those exploiting the child/young person have power over them by virtue of age, gender, intellect, physical strength and /or other economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child’s or young person’s limited availability of choice resulting from their social/economic vulnerability”* **(DEPARTMENT FOR CHILDREN SCHOOLS AND FAMILIES 2009)**

The concept of grooming is dealt with in the case of **REGINA V ALI** (above) quoting **REGINA V ROBINSON**

*“Grooming is not a term of art, but it suggests cynical and manipulative behaviour designed to achieve a particular sexual objective. Not all relationships with underage children can fairly be characterised as involving grooming, although many will. But even where they can, the fact of grooming plainly does not necessarily vitiate consent. Many a seducer achieves his objectives with the liberal and cynical employment of gifts, insincere compliments and false promises. But such manipulative and deceitful methods could not be relied upon to establish a lack of consent whenever the seduction was successful. The situation will often be no different where the complainant is under age. But where the exploitation is of a girl who is of an age where she does not, or may not, have the capacity to understand the full significance of what she is doing, and in particular, where, as here, there was evidence of acquiescence or acceptance rather than positive consent, we think that, as the judge found, it would be open to the jury to conclude that the complainant, perhaps out of embarrassment or some other reason, had in reality unwillingly gone along with the acts which she did not in fact wish to engage in”.*

1. **THE EXPOLOITER**

**UNICEF** reports:

*“One thing that is clear…. is that there is no single ‘type’ of exploiter. Child sex exploiters differ in age, sex, sexual orientation, ethnicity, and wealth. They not only involve men and women who travel abroad specifically to have sex with children but also business travellers, domestic tourists, and local men and women who use tourism premises for sexual encounters with children.*

*Child sex exploiters include:*

1. *paedophiles: who have sexual attraction to pre-pubertal children*
2. *preferential child sex abusers, who lean towards having sex with children in the adolescent stage (pubescent)*
3. *situational child sex abusers, who are simply interested in having sex with someone, and do not care whether it is with an adult or child.”*
4. **THE VICTIM**

Local authorities grade recognition indicators into lower, medium and high level indicators.

We would not expect the indicators to impact on the industry save for perhaps the lateness of the hour at which a couple might come into the hotel; overt sexualised dress; state of inebriation; an apparent poor self image; apparent injury; gang association; proximity of clubs from where the individuals may have emerged; apparent learning disability.

We know that victims and perpetrators can be male or female and any child can be at risk of abuse whatever his or her apparent background. The well dressed and well spoken abuser is as dangerous as the unkempt aggressive stereotypical abuser.

The frightened child is as vulnerable as the child who demonstrates overt affection for the person he or she is with.

**CEOP (CHILD EXPLOITATION AND ONLINE PROTECTION CENTRE)** reported in 2011 that *“victims of abuse frequently do not recognise that they are being exploited and do not disclose abuse”.*

It should be appreciated that some abused children ae reluctant to work with professionals and when confronted will support the abuser.

1. **INDUSTRY FEARS**

**UNICEF:**

*“Not surprisingly…. the links between tourism and child sexual exploitation remain contentious. Few companies or countries are prepared to acknowledge that their clients or citizens engage in the sexual exploitation of children. Travel and tour operators are in the business of providing relaxing and carefree holidays and do not want to be associated with child sexual exploitation. Some respondents in the case studies noted that asking travel and tour operators to commit to The Code was sometimes perceived as asking them to admit that they are directly responsible if their premises are used by those who exploit children or, in the case of airlines, if they carry sexual exploiters to their destinations.*

*Consequently, The (ECPAT) Code website treads very carefully in this area. The background paper of The Code….explicitly distances itself from any suggestion that the tourist industry is actively involved in promoting or facilitating the sexual exploitation of children.*

*“The problem of commercial sexual exploitation of children and its connection with the tourism trade is extremely complex. While the tourism industry is not accused of encouraging this unwanted phenomenon, it has been asked to collaborate and to react against the use of its networks and establishments for this purpose.””*

1. **PRINCIPLES FOR LIABILITY**

The principles for liability are set out in the paper already published.

The US principles are illustrative of the approach to such matters in the various states.

The Courts in the UK will focus on what the hotel or institution knew or should have known when the acts complained of took place. That will ground the basis of liability whether the argument is vicarious liability or negligence in the conduct of operations.

The analysis of what the institution knew or should have known will involve an analysis not only of what is happening in the area where the hotel operates but also what the industry as a whole knows or should know.

The generality of the knowledge of the risk of child exploitation attributable to the industry is clear. The evidence is clear that criminals will use hotels for the purpose of exploitation if they are able to do so with impunity.

Apart from the generality of knowledge, specific knowledge may be attributed to a hotel. By way of example:

* if management knows that gangs operate in the area because the hotel is situate on the major route from one large city to another;
* if management has intelligence that criminals are operating in the area,
* If management is or should be aware that particular rooms on the ground floor with access to the outside through a window are frequently being reserved by the same people,

then management will be expected to do something to inhibit the operations of the criminals in so far as they might involve the establishment;

1. **WHO WILL BE LIABLE: OTHER AREAS OF HOSPITALITY**

It is not only hotels which will be vulnerable to attack and criticism in the event of hospitality being abused by those who exploit children. It is schools, churches, camps, and those who are otherwise engaged in the accommodation of children where they may be exploited. Those responsible and liable will include local authorities who have control of or responsibility for such accommodation.

There is no reason why tour operators should not be liable under the Package Travel Package Holidays and Package Tour Regulations 1992 in circumstances where the child of a client is abused in an hotel abroad and where the operator is held to be liable to *“the consumer for the proper performance of the obligations under the contract irrespective of whether such obligations are to be performed by..other suppliers of services”* except where failures are due to the actions of third parties and are unforeseeable or unavoidable.

1. **LOCAL STANDARDS**

When it comes to the evaluation of negligence and the standard of care to be applied, the operator in so far as its operations are outside the UK might argue that the local standards to be applied are different to those applied in the UK and rely on cases such as:

**WILSON V BEST TRAVEL LTD 1993 1 AER 353**

**JAPP V VIRGIN HOLIDAYS LTD 2014 PIQR P8**

**LOUGHEED V ON THE BEACH LTD 2014 EWCA 1538**

**BRONAGH KERR V THOMAS COOK TOUR OPERATIONS LIMITED 2015 NIQB 9**

The standards to be applied in relation to child exploitation are in truth unlikely to vary from country to country.

An interesting issue may however arise where a traditional marriage involving a young person who is a minor according to UK law, is conducted and consummated in an hotel outside the UK. The extent to which this might be child exploitation rendering a hotel in the UK liable, will be a matter for detailed analysis.

The age of consent ranges from 14 to 16 years throughout Europe. Thus by way of example, what of the teacher who takes a 15 year old pupil to France where the age of consent is 15 years and they stay in an hotel operated by a UK based chain? Will there be a claim for damages if, because of publicity the hotel management knew or should have known of the relationship and the minor (as she would be in the UK) suffers psychiatric injury. The influence which the teacher is able to exercise over the child is likely to amount to grooming or exploitation.

In relation to local standards the Court of Appeal in **LOUGHEED V ON THE BEACH LTD** said:

*“I would accept, as is obvious, that mere compliance with locally applicable regulations will not exhaust the enquiry, for the very reason that the locally applicable standards may recognise that such compliance is of itself insufficient. But I reject the suggestion that the English court can, if it finds local standards to be unacceptable, judge performance in that locality by reference to the standards reasonably to be expected of a similar establishment operating in England or Wales. Such an approach is neither sensible nor realistic. It is also precluded by authority.”*

As to the burden of proof on an operator and the standard of care see:

**RICHARDS V WF WHITE & CO 1957 1 LLOYDS REP 367**

**WARD V TESCO STORES LTD 1976 1 WLR 810**

**DAWKINS V CARNIVAL 2012 2 LLOYDS REP 1**

The contract is to be performed with reasonable skill and care according to local standards.

There will be a burden on the operator to make themselves aware of the risks whether it be of opportunistic abuse or abduction.

Where a child is abused in or abducted from an hotel which is in an area where there is a history of abuse or where local crime statistics demonstrate the vulnerability of that area to exploitation the operator is likely to be vulnerable to criticism if preventive measures are not considered. What those measures are will depend on the circumstances.

1. **CAMPS**

The American Camp Association accepts that a duty is owed to families to exercise reasonable care to protect campers from unreasonable risk of harm whilst recognising that one cannot completely ensure or guarantee the safety of children. Certain risks are inherent in the activity which they undertake but sexual abuse is not one of those inherent risks.

The ACA looks at internal policies, express representations, standards and practices in the industry.

The particular vulnerability of camps in the US is that they have what is described as custodial and fiduciary duties. The custodial duty arises from the full control they have over the children. The fiduciary duty arises from the fact that families entrust their children to the camp. The duty is therefore to determine what would a reasonable camp in those circumstances have done to protect the child?

The camps acknowledge that they can be vicariously liable for the acts of their employees. They can also be liable because they have failed to screen, select, train and retrain staff; supervised staff and fellow campers or failed generally to take reasonable measures to protect campers

In **JUAREZ V BOY SCOUTS OF AMERICA INC 81 CAL APP 4TH 377 2000** the court found that BSA owed a duty to protect a 12 year old boy scout from a volunteer troop leader who had sexually abused him over a one year period. The BSA was not negligent in hiring supervising or retaining the volunteer; nothing in his background revealed evidence of his potential behaviour. The court held that the BSA did owe a duty to take appropriate measures to protect scouts by warning, education and training of the scout, his parents and the volunteer leaders. The court assessed the foreseeability of harm and the degree of certainty that the victim suffered harm, the closeness of the connection between the defendants conduct and the injury and the policy of preventing future harm on the usual principles. The BSA understood the dangers and had developed a “Youth Protection Programme” with written information for parents which set out the risk of molestation and had compiled statistics showing how their measures had decreased the risk of problems within the BSA. However the boy himself who spoke Spanish but little English and the Spanish speaking mother had been given an English rather than a Spanish version of the booklet. There was the court held a special relationship between the scout and the BSA.

The attitude of the Court to child exploitation and the duties which are owed generally to children appear in the judgment of the court:

*“Our greatest responsibility as members of a civilized society is our common goal of safeguarding our children, our chief legacy, so they may grow to their full potential and can, in time, take our places in the community at large.   The achievement of this objective is gravely threatened by sexual predators who prey on young children. The legislative judgment, which reflects a widely shared value of our society, is that the use of children as sexual objects is extremely harmful to their wellbeing.   Its long-lasting injury often lies hidden in a victim's psyche until it works its insidious harm by impairing subsequent emotional development, if not by also crushing the victim's spirit. Public policy against the victimization of children is most evident in our criminal laws, which exact a heavy toll from those who endanger our most precious asset…..So, too, it must be in our civil law. The interests of the state in protecting the health, emotional welfare and well-rounded growth of its young citizens, together with its undeniable interest in safeguarding the future of society as a whole, weigh strongly in favour of imposing a duty in this case. Such a duty will motivate the Scouts to take reasonable steps to see that the vital information imparted in its child abuse prevention program is provided to those who can most benefit from it--scouts, their parents, and adult volunteers--and this heightened awareness….can prevent future occurrences of sexual molestation.Therefore, the policy of preventing future harm and the consequences to the community of that harm are factors squarely in Juarez's favour….”*

1. There is a burden on the organisation to consider how proactively it can respond to risk and the strategies to be employed.

The strategies are broken into three constituent parts (1) preparation or readiness (2) detection or reaction and (3) reporting or response.

The preparation involves deterrence of the opportunistic or grooming predator.

The organisation makes it harder for him or her to operate within the environment. He will know that the organisation has a zero tolerance approach to exploitation. He will avoid the camp or hotel. Staff are screened. Screening for existing employees is repeated.

It is acknowledged that some abusers have no criminal record; they have never been caught. Others may be random and opportunistic abusers who may not hitherto have committed any act of abuse.

A 16 year old male may be attracted to a 15 year old camper and end up sexually abusing that girl.

The organisation deals with those possibilities by screening, education and training of staff, campers and families.

According to BSA the training is frequent; it reinforces prior learning and introduces new information and insights. Staff are trained to recognise the behaviours of predators and the threated child.

The camps avoid one member of staff being alone with a child; the physical layout of the camp is inspected to identify those places where abuse may take place, the *“clean sweep”* of the site.

Systems are designed to address visits or communications by vendors, guests and other third parties.

Families are told to recognise out of season communications between campers and staff, off campus visits.

Detection involves the capacity to recognise the abusive relationship and the innocent event such as touching a child as he is put into a harness or canoe.

Any error is said to be in favour of intervention.

Reporting involves strict policies which require junior members of staff to engage in the procedure.

Much of this might be translated into the realm of the hospitality industry.

1. **THE ORIGINS OF PROTECTION**

Protection starts from an understanding of the risk and the development of a code.

The **UN CONVENTION ON THE RIGHTS OF THE CHILD**, an international human rights treaty guarantees comprehensive rights to children under the age of 17

The **UN GLOBAL COMPACT** is a strategic policy initiative for businesses which are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti corruption ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

Child protection is designed to preventing and responding to exploitation, violence and abuse against children including commercial sexual exploitation, trafficking, child labour and harmful traditional practices ([www.unicef.org/publications](http://www.unicef.org/publications))

Certain statutes eg the California Transparency in Supply Chains Act 2010 require companies with a turnover of more than $100 million who do business in California to report on what they are doing to eliminate exploitative practices including trafficking in persons, in their supply chains. It is a question of the public declaration of actions to address the problem.

1. **ECPAT (END CHILD PROSTITUTION, CHILD PORNOGRAPHY AND THE TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES)**

**THE CODE OF CONDUCT FOR THE PROTECTION OF CHILDREN FROM SEXUAL EXPLOITATION IN TRAVEL AND TOURISM**

The purpose of the ECPAT Code is to prevent and mitigate child sex trafficking. It is a mission to work with government, NGOs and others in the industry to address child exploitation issues. It is designed to take a strong stand against child exploitation.

There is in certain quarters a fear that to recognise the vulnerability to exploitation in a particular brand hotel is to damage the brand. ECPAT seeks to encourage the industry to appreciate that exploitation comes in many forms, affects not only budget hotels but the luxury end of the market and that to set in place procedures, far from damaging the brand, enhances it.

The Code sets out in terms just how CSE impacts on the hotel industry in the following terms:

*“Hotels and other accommodation facilities are often the place where children are sexually abused. Hotel owners and managers around the world are in a position where they can effectively, and in a very visible way, support the campaign against the commercial sexual exploitation of children. The International Hotel & Restaurants Association (IH&RA), adopted in 1996 a resolution in which they”recommend to all their members ”…to consider measures to prevent the use of their premises for the commercial sexual exploitation of children” and ”to prevent ease of access to child prostitution or child pornography”. The tourism project, dubbed ”Grande Cause Nationale 1997”, by the French Government, has summarized in a constructive way what hotels can do to join the fight against the commercial sexual exploitation of children.*

1. *The hotel’s policy shall clearly state the hotel’s position with regard to the trade in child sex. The hotel shall also make this understood among its staff and provide them with knowledge on how to handle problems should they arise.*
2. *Hotel management shall provide information to its personnel and guests regarding national laws and the penalties imposed for the sexual abuse of children.*

1. *The hotel’s security staff shall be trained to handle guests or personnel who sexually abuse a child, particularly on the hotel’s premises.*
2. *Co-operate with the relevant labour unions.*
3. *Prevent children from entering the hotel via bars, restaurants, lobby or reception.*

1. *Work actively. As a precautionary measure, build up links with police, social authorities and other organizations that may be involved with an encroachment.*
2. *Personnel, who observe anything that suggests that the commercial sexual exploitation of children may be taking place, must report immediately to the police or some other authority with the right to intervene (Grande Cause Nationale, 1997)”.*

The structure of the Code is described in the following terms:

*“The Code of Conduct has a practical structure made up of six criteria, as follows:*

1. *To establish an ethical policy against the commercial sexual exploitation of children*
2. *To train personnel in the country of origin and travel destinations*
3. *To introduce a clause in contracts with suppliers, stating a common repudiation of the commercial sexual exploitation of children*
4. *To provide information to travellers by means of catalogues, brochures, in-flight films, ticket slips, home pages, etc.*
5. *To provide information to local “key persons” at destinations*
6. *To report annually”.*

***“To establish a corporate ethical policy against commercial sexual exploitation of children:***

*The company must set up a written policy against commercial sexual exploitation of children. The employees have to be made aware of the existence of the policy as part of their professional training.*

***To train personnel in the country of origin and travel destinations****: Personnel, agents, contracted hotel staff, regardless of nationality, sector of responsibility and terms of employment have to be informed and individually trained in The Code and its contents, and information has to be made available and shared via the existing internal communication channels. After training, the employees have to know how to proceed when they suspect that a traveller or other person is involved in commercial sexual exploitation of children (abuse, procuring, photographing etc.). A number of employees in "key positions" (local managers, guides, buyers of hotel and accommodation services etc.) have to be trained as Code instructors and internal monitors and may, in turn, train the rest of the company staff.*

***To introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children:*** *Such clauses stipulate that the contract may be cancelled if the supplier's owners and employees do not meet the commitments to repudiate commercial sexual exploitation of children in relation to their activities.*

***To provide information to travellers through catalogues, brochures, in-flight films, ticketslips, websites, etc.:*** *Information to travellers is provided by means of catalogues, brochures, in-flight videos, luggage-tags, ticket-slips, home pages, etc. The information will call the travellers' attention to the problem, by explaining the contents of The Code of Conduct, and the commitment of the company to socially responsible tourism. An important component of the information is contacts that the travellers can use for providing anonymous tips.*

***To provide information to local "key persons" at destinations:*** *“Key persons" are those at the travel destination with whom the tourism company co-operates, without necessarily having a signed contract. These persons/parties include individuals who usually have substantial contact with the customers (i.e. restaurant owners, bar owners, taxi drivers), as well as persons likely to have an influence within the community (i.e. decision makers, mayors, representative of local NGOs, etc.).*

***To report annually****: The main purpose of the reporting process is to allow sharing of experience among the companies implementing The Code, and to be a source of inspiration for other members of the industry and with civil society in general. Moreover, by reporting the challenges and the results of working with The Code, companies contribute to the continuous improvement of the training and the know-how regarding the practical aspects of its implementation. The reports are only made public upon the authorization of the company submitting the report.”*

In July 2015 ECPAT launched it public service announcement and campaign “Does your Hotel Know” which calls on hotels and travellers to learn the signs of sex trafficking and to take action.

1. **PROCEDURES**

Some procedures which might be considered by the industry are:

1. There must be a default position which in this area entails the setting up of procedures and training of staff.
2. The procedures will be such as to ensure not only that staff know what to look out for but also that there is a hierarchical chain such that from top to bottom everyone knows what is to be done where suspicion arises.
3. Staff must be trained to identify situations where children may need protection and they must have the means immediately to report to those further up the chain of command and to the Police where appropriate.
4. They must have the confidence to confront where necessary. In one case a female victim of exploitation spoke of being taken to hotels and staff obviously suspecting that something was going on but not having the courage to speak and *“turning their heads”* as she and her companion booked in.
5. Staff on reception must be trained as must the cleaning staff who, if they have access to the rooms may see something which arouses suspicion.
6. Staff who cannot gain access to a room because of a “do not disturb” sign but where it is not a honey moon couple but an adult with a child must know how to react.
7. It is often about reacting. One of the elements of the code is to train staff how not to react eg by reacting frantically so as to create a scene leading in some cases to violence.
8. *“Signatories canvassed during the assessment appeared unanimous that training is the strongest element of The Code. Costa Rica has been particularly active. For example, between August and December 2010, Paniamor managed to hold 21 workshops in 17 different towns and cities across Costa Rica. This led to 402 people being trained in 270 companies. In Costa Rica, Code training was found to have a positive effect on team building and employee retention. Interviewees commented that The Code training contributes to a safer workplace.*

*Training is also the most costly part of Code implementation activities, not least because of high turnover within the industry, which necessitates regular repeat trainings. Mass group trainings given by internal trainers were found to be less popular than smaller external trainings with dedicated Code trainers. Several interviewees, for example, mentioned that having an external trainer makes employees take the training more seriously. However, signatories are often geographically spread out and one trainer is unable to visit all signatories on an annual or even bi-annual basis. This situation could potentially be alleviated through greater use of community trainers and industry volunteers. Private sector champions and “ambassadors” could also be identified to hold occasional events and training seminars on behalf of The Code. This would need to be done in a way that did not dilute the quality of the training.*

*One possibility for consideration would be a standardized training package, ideally available online. This could include a standard training curriculum, a training CD-ROM, online materials such as training videos, sample campaigns, etc. The package could also include training on reporting and monitoring, which as noted below, is currently limited. Such a package would also help to ensure training is available in more remote areas. However, the materials would need to be kept up-to-date and would need to be designed in such a way as to require and facilitate the inclusion of information on local realities. Such training packages can also be institutionalized in educational curricula of tourism schools and universities providing diploma courses in travel and tourism. Another possibility to consider is building training into existing hotel training programmes, rather than as stand-alone activities. These could include induction trainings or broader trainings in human/child rights related issues (see section below on New Opportunities).*

*One hotelier commented that employees go home and share what they have learned with their families. Then their children share what they have learned from their parents with their friends at school. The result is a cumulative community outreach and awareness-raising process. This appears to be one potential important and low-cost spin-off and helps expand the potential impact of the work beyond the immediate use of hotel premises. Indeed, case study participants and interviewees all mentioned the need for greater awareness raising and community outreach. To date, The Code activities have seen limited connection with schools, community groups, and church groups.*

*This is a difficult area as the mandate of The Code is mainly to work with travel and tourism operators, and less with destination communities directly. At the same time, there is an emerging discourse in the area of business and human rights about moving beyond corporate responsibility to respect human rights towards a commitment to be more active in supporting the realization of these rights. Certainly, there are clear attractions in having employees act as community ambassadors. SEC does not occur in a vacuum but in the context of societal attitudes to the status and rights of children, the willingness of members of the public to report cases and the willingness of the authorities to take action. Establishing employees as community ambassadors would help to negate two current weaknesses identified by this assessment. First, there appears to be a greater willingness among larger enterprises to join The Code than smaller ones. While this is a problem if child sexual exploitation is occurring more often in smaller hotels, the bigger hotels have more staff and their engagement means a greater number of potential community ambassadors. Second, if employees can use their training outside the immediate tourism context, high turnover becomes a potential advantage rather than a significant problem.*

*The establishment of employees as community ambassadors could perhaps be fostered through a second-level training programme. This would need to take into account that different skills are needed for education work in local communities than for identifying and reporting potential SEC cases in a hotel environment. The training curriculum would need to include communication skills and a basic grounding in child rights, which would provide a starting point for their work and help address potential objections in the community to action against sexual exploitation of children.”* **(UNICEF)**

1. The provision of information is covered by **UNICEF**:

*“This criterion involves the provision of information to travellers by means of catalogues, brochures, inflight films, ticket slips, home pages, etc. These provide a simple and practical entry point to reach large numbers of people, including both potential offenders and the vast majority of tourists, who may be in a position to report potential cases once made aware of how to do so.”* **(UNICEF)**

1. As regards key persons:

*“Current Criterion: Provision of information on “local key persons” at the destinations.*

*Proposed Criterion: Signatories encourage employees to act as Code Ambassadors in their local community in order to spread awareness of The Code.*

*(This is a major change, taking the emphasis off key persons, where limited progress has been made across the board, and placing it more specifically on working with the local community.)*

*Key persons are considered to be those at the travel destination with whom the signatory company cooperates without having a contract. These persons/parties include those having substantial contact with customers (e.g. restaurant and bar owners, taxi drivers) as well as the police and other influential people in the community.*

*Beddoestates that, “The implementation of the Criteria 5 (key persons) is one of the most important for the protection of children from sexual exploitation and at the same time the most challenging one of all six criteria, especially for companies operating in the majority of destination countries. When signatory companies put energy into the networking in the destination countries, the protection of children in their companies stands a greater chance of success.”[[1]](#footnote-1)*

*Information from the case studies, however, suggests that less progress has been made on Criteria 5 than any other criteria. In Costa Rica, none of the signatories seemed familiar with the message about key persons, although they were familiar with key people involved in Paniamor. There was also little attention paid to this issue in either the Netherlands, where the key persons criteria was not viewed as relevant in sending countries, or Thailand. There appears to be confusion with regard to key persons as to who they are and what exactly signatories should do.*

*Although it is clear that networking with key persons improves the chances of success, it can be a time consuming activity and not clearly the role of the travel sector. One argument is that, if The Code companies are to take a role outside their immediate environment, this might better focus on community awareness and outreach, with the aim of extending the impact of Code knowledge and training to the wider destination community. As indicated under the training criterion, progress has already been made in this area, although it is not one of the six criteria. At the same time, emerging developments in the field of business and human rights are encouraging companies to take a greater role in actively promoting efforts to address issues such as SEC. The expectations of Code companies in this regard should be carefully considered before a decision on this criterion is taken.”*

1. **OTHER GUIDELINES**

*“In many ways, The Code was ahead of its time, preceding broader recognition of corporate responsibility and obligations. In June 2011, thirteen years after the inauguration of The Code, the United Nations Human Rights Council endorsed the Guiding Principles for Business and Human Rights (BHR Guidelines). While not a legally binding document, this endorsement established global standards of practice that are now expected of all governments and businesses with regard to business and human rights. The Guidelines are based on a Protect, Respect and Remedy Framework, consisting of:*

1. *The State Duty to Protect Human Rights*
2. *The Corporate Responsibility to Respect Human Rights*
3. *The need for greater Access to Remedy for victims of business-related abuse.*

*As the first area suggests, the BHR contains obligations for States as well as business. The first principle is that, “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” As highlighted elsewhere, the study identified some frustration on the part of Code signatories in terms of inaction by law enforcement authorities on cases they had reported.*

*For business, principle 13 states that “The responsibility to respect human rights requires that business enterprises:*

* 1. *Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
  2. *Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (emphasis added).[[2]](#footnote-2)*

*The Guidelines also highlight that in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:*

* 1. *a policy commitment to meet their responsibility to respect human rights;*
  2. *a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
  3. *processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”.* **(UNICEF)**

1. **CONSEQUENCES**

A failure to protect children will inevitably draw the business into litigation and will damage its brand.

The level of damages will not get to the US levels which are awarded by the jury and cover matters such as “outrage” per se (see **DOE V THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, BOY SCOUTS OF AMERICA 2012 US DIST. LEXIS 124658 (12/8/12)** where over US$ 1M were awarded including for outrage). In the UK there is scope for “aggravated damages” although they will not approach the levels of damages awarded in the US.

In September 2015 the first law suit for child exploitation was launched in Minnesota. A 14 year old girl had been lured from the Laos countryside by a man from Minnesota. He took her to an hotel where he brutally raped her. She fell pregnant. She was bound to him by a child traditional marriage. The man gained custody of the child in Laos. He moved to Minnesota. She followed with her father. The man threatened to deny her access to the child unless she continued to have sex with him. She has now launched proceedings for monetary damages for violation of federal laws regarding child sex tourism and trafficking; she hopes to launch federal charges. The suit is under Masha’s law. She is claiming US$ 450,000. He has filed for bankruptcy. This, the suit at the instigation of the victim will become more usual.

Damages for sexual assault in the UK will embrace general damages for pain suffering and loss of amenity.

Cases already decided suggest awards which range from over £70,000 down.

The Judicial Studies Board Guidelines for the Assessment of Damages will provided some guidance in relation to damages for psychiatric injury and post traumatic stress.

Psychiatric Damage

JSB\_COL1

**C V FLINTSHIRE COUNTY COUNCIL 2001 PIQR Q9**

A judge is entitled to approach the assessment of damages with a broad brush. The guidelines are not always helpful as physical, sexual and emotional abuse of children fall into a wholly different category from psychiatric damage that follow other personal injuries.

*“Dealing with her current symptomology, the judge recorded the common ground between Mrs Garland, the consultant clinical psychologist at the**Tavistock Clinic who reported on the claimant's behalf, and Dr Abel, a research fellow in psychological medicine at the Institute of Psychiatry who reported on the defendants' behalf. They were agreed that she was currently suffering:*

*“… panic attacks, negative cognition, low self-esteem, episodes of low mood, tearfulness, irascibility and a reducing capacity for self harm. Also, there was difficulty in concentration and an inability to trust anyone other than her children and her therapist.”*

*… It is probably helpful for a full understanding of the current symptoms to read from Dr Abel's report. At page 6 of that report, under the heading “Current Symptoms”, she said:*

*“She says that her current symptoms include a horror of being locked in places, very poor self-esteem, regular nightmares every two to three months, an inability to trust anybody enough or to ask anybody for help. She says that her experience in care left her with a will and a means to destroy herself quietly for many years both physically and psychologically. She says this led her to take many drugs. Since 1988, she has been seeing a counsellor and has found this has helped her enormously.*

*She continues to suffer from headaches and anxiety problems which mean that she is somewhat restricted in her ability to go out of the house unless she is driving a car. This has improved more recently and she has been able since August to take up a job as a freelance magazine producer. She does some of her work at home, but some in the office. This is the longest job she has had.*

*She says that, since her relationship with her husband Tim has finally come to an end and she has been with her current boyfriend for the last two years and with her counsellor, things have improved. She denies symptoms associated with Post Traumatic Stress Disorder. Her main ongoing symptoms are very low self-esteem, intermittent depression and anxiety and occasional panic attacks.”*

*…For my part, I am far from satisfied that the Judicial Studies Board categorisation applies to this kind of case at all. Physical, emotional and sexual abuse of children in care by those who are supposed to provide that care seems to me to fall into a wholly different category from psychiatric damage that follows other personal injuries. The injury is of a different character. The essential element of the damage is the extent to which the injury compounds and multiplies the effect of the pre-existing condition. The Judicial Studies Board guidelines do not include among the factors to take into account the duration of the suffering. In the nature of this kind of abuse, the victims are frequently unable to address the abuse until many years later. This claimant is an example of that unhappy state of affairs. She suffered from the age of 14 until 1995, five years before the judgment, or, perhaps more accurately, until 1997 or 1998, when she first disclosed the harm she had suffered to the Waterhouse Tribunal and began to receive treatment for it. It is all very well to say that the prognosis today is optimistic but guarded, but today is 20 years after she began to suffer at the hands of the local authority. I am quite certain that there is no easily definable bracket into which to place this case such as would enable the court to say that an award which fell outside that bracket must of necessity be so plainly wrong as to be set aside”*

One issue will be the teasing out of any psychiatric condition directly attributable to the abuse as opposed to other problems which the claimant will have suffered in any event. The difficulty with this complex evidential analysis can be seen in the Benzodiazipine litigation where psychiatric conditions such as depression, whilst a recognised consequence of the medication was also suffered by the claimant before he or she became dependent on the drug. In the historic abuse cases the exploiter will more often than not choose the victim on the basis of some pre existing vulnerability.

It is likely that the court will not assess damages on the basis of a percentage discount to reflect any pre existing condition but rather will take a broad brush approach.

The difficulty in relation to attribution and causation will be seen in the claim for impact on future career and earnings. There, genetic inheritance, the effect of early childhood and personality development in the childhood environment, the contribution of rather later adverse experiences of an extreme kind undergone whilst in early life where the effect may vary from individual to individual will fall to be analysed (**AB V NUGENT CARE SOCIETY EWHC 1005 QB).**

The court in **FLINTSHIRE** endorsed the judgment of Scott Baker J at first instance:

*“While I am able to make findings on the issue of causation, there are echoes of the words of Mustill J. in Thompson in that there is an impossibility of making a precise apportionment between what the defendants' negligence has caused and what has been caused by other factors. Inevitably I have taken a broad view and done my best to reach a fair conclusion on the whole of the evidence. It is very much a matter of feel.”*

See also:

**BJM V EYRE 2010 EWHC 2856**

**RAGGETT V SOCIETY OF JESUS TRUST 2012 EWCH 3132**

**RE XY 2011 CICA**

Even if there is no recognisable psychiatric injury the claimant will receive damages for assault which will include an element for injury to feelings.

The impact on the child may involve psychotherapy and loss of future earnings and in one case where the child was abused from newborn to age 3 years, future care.

In 20111 Essex County Council agreed damages of almost £1M for four siblings who had suffered parental abuse. In XY the level of compensation was over £3M for a man whose life was wrecked by abuse at a young age and when at a formative stage of his life.

The claim may be outstanding for many years and certainly three years after majority.

Limitation issues will be addressed elsewhere.

1. The positive consequences of compliance have been analysed by UNICEF:

*“In all three case study countries, there was agreement amongst stakeholders that The Code has had a positive impact on the travel and tourism sector and on its awareness and actions to protect against the exploitation of children. Employers noted that Code training has helped improve staff motivation and pride in their job, encouraged teamwork and increased retention. (One employer also mentioned that it has helped staff understand how to avoid unwanted sexual attention from guests and what to do if it occurs.) Employees responded with some pride that they had been involved in the training and explained how they had shared the information with their families and had since reported cases in their own community. In the Accor Hotels in Thailand, training on The Code is mandatory for new staff. While high staff turnover is a common problem in the sector, respondents expressed the view that management turnover from Accor hotels had actually had a positive consequence in terms of dissemination of The Code to other hotels.”*

*“The Code with other initiatives such as the Solidarity Tourism Initiative, a corporate social responsibility project of Hotel Presidente in Costa Rica. This hotel, located in the centre of San José, was formerly known as a place where sexual exploitation of children was occurring openly and on a regular basis. Now 100 per cent of the employees are trained, security is tight, taxi drivers know they will be fired if children arrive at the hotel in their cars, and every room has a card indicating that sexual exploitation is not tolerated. Additionally, Hotel Presidente’s Solidarity Tourism Initiative adds $1 per night to the client’s bill to raise money to help protect children and adolescents in the country’s most vulnerable areas from sexual exploitation. Hotel Presidente has raised USD 126,000 since 2007, and 50 per cent has been donated to the NGO Paniamor. The hotel further works with ASONI, the Association for Children’s Smiles (La Asociación para la Sonrisa de los Niños y Niñas) in two at-risk communities in San José. The hotel matches every dollar donated with a dollar of its own”.*

*“Respecting and supporting children’s rights enables business not only to prevent harm, but also to do good. By integrating respect for children into its core mandate, businesses can strengthen sustainability and human rights initiatives, and generate real benefits for business as well. Such efforts can build reputation, achieve better risk management, and enhance the business “social license to operate”. A commitment to children can help recruit and maintain a motivated workforce through supporting employees who are parents and caregivers, promoting youth employment and talent generation. Working for children helps to build strong, well-educated communities, which are critical to a stable and sustainable business environment.”*

**RICHARD BARRACLOUGH QC**

**NOVEMBER 2015**

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)