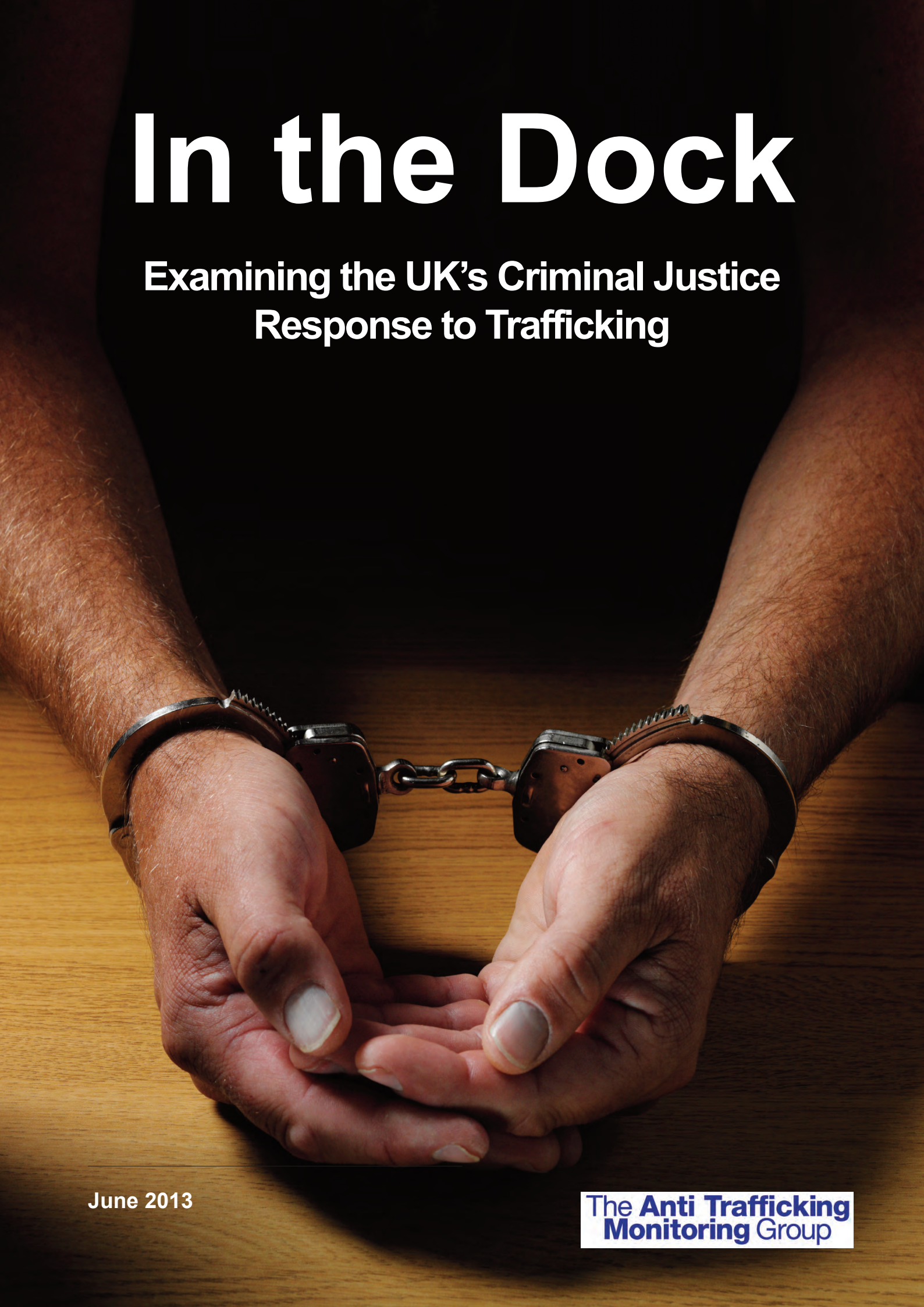


In the Dock

Examining the UK's Criminal Justice
Response to Trafficking



June 2013

**The Anti Trafficking
Monitoring Group**

The Anti Trafficking Monitoring Group

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Foreword

In the public and political discourse on crime, much emphasis is placed today on the needs of victims. This is as it should be. Victims suffer the effects of crime, so they need to be treated with understanding and their rights should be protected at all times. It is also right that the State investigates and prosecutes offenders.

This report looks at how the UK's criminal justice system deals with the crime of trafficking in human beings. It demonstrates that there is still much to be done to ensure the prosecution and conviction of traffickers as well as the protection of victims.

People who are trafficked sometimes commit offences. They may well be trafficked and forced to carry out illegal activities, such as cannabis cultivation, street begging or pick-pocketing. Many may also be committing immigration offences as part of their trafficking ordeal. However, it is crucial to remember that they do not commit these offences of their own free will. They commit them because they are in the thrall of their traffickers. Unfortunately the UK's prosecution system all too often fails to recognise who are real victims and who are offenders. This is a sad reflection of the lack of understanding throughout the criminal justice system of what trafficking is, and how it affects those who are trafficked.

I therefore commend this report to all who have a responsibility in any part of the criminal justice process. It will help practitioners at all levels not only to recognise the rights and needs of victims of trafficking but also to be alert to this modern crime.

Remember: the apparent offender in front of you may be a victim of trafficking.



Paul Whitehouse
Chair of Anti-Slavery International
June 2013

Preface

In May 2009, a group of nine UK-based organisations established The Anti-Trafficking Monitoring Group (ATMG) to monitor the implementation of the Council of Europe *Convention on Action against Trafficking in Human Beings*, which came into effect in the UK on 1 April 2009. With the UK's opt-in to the *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, the ATMG undertook to include the Directive in its monitoring function.

The nine organisations belonging to the ATMG are:

- Afruca (Africans Unite Against Child Abuse)
- Amnesty International Northern Ireland
- Anti-Slavery International
- BAWSO (Black Association of Women Step Out)
- ECPAT UK (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes)
- Helen Bamber Foundation
- Kalayaan
- POPPY Project (of Eaves Housing)
- TARA (Trafficking Awareness Raising Alliance, of Glasgow Community and Safety Services)

In addition, the ATMG works closely with the Human Trafficking Foundation and STOP THE TRAFFIK.

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Acronyms and abbreviations frequently used

| | |
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| ABE | Achieving Best Evidence |
| ACPO | Association of Chief Police Officers |
| AI(TC)A | Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 |
| ATMG | The Anti-Trafficking Monitoring Group |
| BIMBO | Bowen's Intervention Mechanism before Official Detention |
| CCRC | Criminal Case Review Commission |
| CCU | Complex Casework Unit |
| CEOP | Child Exploitation and Online Protection Centre |
| CICA | Criminal Injuries Compensation Authority |
| CJA | Coroners and Justice Act 2009 |
| CJS | Criminal Justice System |
| COPFS | Crown Office and Procurator Fiscal Service (Scotland) |
| CPS | Crown Prosecution Service |
| CPTSD | Complex Post-Traumatic Stress Disorder |
| DHSSPS | Department for Health, Social Services and Public Safety (Northern Ireland) |
| DWP | Department of Work & Pensions |
| ECPAT UK | End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EHRC | Equality and Human Rights Commission |
| EU | European Union |
| GLA | Gangmasters Licensing Authority |
| GRETA | Group of Experts on Trafficking in Human Beings of the European Commission |
| HBF | Helen Bamber Foundation |
| HMRC | HM Revenue & Customs |
| HSE | Health and Safety Executive |
| IDMG | Inter-Departmental Ministerial Group on Human Trafficking |
| ILO | International Labour Organization |
| IOM | International Organization for Migration |
| JIT | Joint Investigation Teams |
| JRF | The Joseph Rowntree Foundation |
| LSCB | Local Safeguarding Children Boards |
| MASH | Multi-Agency Safeguarding Hubs |
| MoJ | Ministry of Justice |
| MPS | Metropolitan Police Service |
| NCALT | National Centre for Applied Learning Technologies |
| NIGALA | Northern Ireland Guardian Ad Litem Agency |
| NPIA | National Policing Improvement Agency |
| NGO | Non-governmental organisation |
| NHTU | National Human Trafficking Unit (Scotland) |
| NRM | National Referral Mechanism |
| OCB | Organised Crime Branch (Northern Ireland) |
| OCTF | Organised Crime Task Force (Northern Ireland) |
| ODW | Overseas Domestic Worker |
| OHCHR | Office of the High Commissioner for Human Rights |
| OSCE | Organization for Security and Co-operation in Europe |
| PCC | Police and Crime Commissioner |
| PCSO | Police Community Support Officer |
| PFA | Protection of Freedoms Act 2012 |
| PPS | Public Prosecution Service (Northern Ireland) |
| PPU | Public Protection Units |
| PSNI | Police Service of Northern Ireland |

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| PTSD | Post-Traumatic Stress Disorder |
| ROI | Republic of Ireland |
| SCDEA | Scottish Crime and Drug Enforcement Agency |
| SCO9 | MPS Trafficking and Prostitution Unit |
| SCT | Special Casework Team |
| SGC | Sentencing Guidelines Council |
| SOA | Sexual Offences Act 2003 |
| SOCA | Serious Organised Crime Agency |
| SPOC | Single Points of Contact |
| STTCG | Scottish Tactical Tasking and Coordinating Group |
| TARA | Trafficking Awareness Raising Alliance |
| UKBA | UK Border Agency |
| UKBF | UK Border Force |
| UKHTC | UK Human Trafficking Centre |
| UNCRC | United Nations Convention on Rights of the Child |
| UNODC | United Nations Office on Drugs and Crime |
| YOI | Young Offender Institutes |
| YOT | Young Offender Teams |

Executive Summary

In the Dock is The Anti-Trafficking Monitoring Group's (ATMG) third report. The ATMG continues its unique task of monitoring and evaluating the UK's performance in implementing the *Council of Europe Convention on Action against Trafficking in Human Beings*¹ and the *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*.²

This report examines the effectiveness of trafficking investigations and prosecutions through the UK Criminal Justice System (CJS)³ in terms of law, policy and practice.

In particular, the report focuses on:

- Obstacles that impede an effective criminal justice response to trafficking;
- The UK's ability to ensure its obligations to protect trafficked persons participating in criminal proceedings;
- Adherence to the requirement not to criminalise trafficked persons; and
- Presenting examples of good practice from within the UK and abroad wherever possible.

The ATMG was pleased to find examples of localised good practice and outstanding work by the police, prosecutors and judges that led to trafficking convictions. We found that successful trafficking prosecutions are commonly linked to areas where specialism is developed within the police and other criminal justice actors, or where multi-agency and international partnerships were put into place.

The research found that such examples were often the product of individual efforts, dedication and deeper understanding of the problem. Unfortunately, these excellent examples do not represent the situation overall in the UK, as the CJS is yet to develop an efficient response to trafficking that tackles this egregious crime as a priority. The ATMG concludes that *the UK is at risk of losing the fight against human trafficking unless it urgently develops a systematic criminal justice response*.

In particular, the ATMG is concerned that:

1. Human trafficking is not a policing priority despite the Government's commitment to make the UK a hostile environment for traffickers;
2. There is no unified law against human trafficking in the statute books, often leaving criminal justice actors uncertain about how to identify the crime and prosecute traffickers;
3. Despite the steady increase in the number of potential trafficked persons identified, the number of traffickers punished for trafficking offences has decreased;
4. In comparison, evidence suggests that many trafficked persons are prosecuted for crimes they were compelled to commit while their traffickers enjoy impunity;
5. The impact of trafficking on victims is often misunderstood by criminal justice actors, resulting in inappropriate responses that hamper the trafficked persons' ability to act as a witness and may potentially cause them further harm.

¹ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005. Hereinafter known as the "Convention".

² With the UK's opt-in to the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the ATMG undertook to include the Directive in its monitoring function. Full title: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. This EU Directive replaces Council Framework Decision 2002/629/JHA. Hereinafter known as the "Directive".

³ The prosecution of trafficking is interpreted in this report as an umbrella term encompassing the many organs of the CJS and describing the process of collaboration and response between CJS agencies such as the police, the United Kingdom Human Trafficking Centre (UKHTC), the Crown Prosecution Service (CPS), the courts, prisons and probation service.

In the previous two ATMG reports,⁴ it was argued that the UK should appoint an independent Anti-Trafficking Commissioner⁵ with statutory powers, to fulfil the role of an independent monitoring body recommended by Article 29.4 of the Convention. It is our conclusion that the continued absence of an Anti-Trafficking Commissioner exacerbates the situation described in this report.

Trafficking in the UK

Knowledge about the manifestation of trafficking and current trends is essential for an effective criminal justice response, and especially for planning any future strategies. The research found that policy is yet to take into account the constantly changing nature of the crime, the complexities of trafficking and its impact on trafficked persons.

In the past two years, data from the National Referral Mechanism suggests an upward trajectory in the number of referrals of potential trafficked persons. The provisional 2012 NRM statistics alone are said to have increased by 25% on the 2011 figures, which are higher than previous years.⁶ Furthermore, according to the UKHTC, the referrals in the first quarter of 2013 (yet to be published) are said to exponentially exceed the 2012 levels. Also, for the first time in 2012, the UKHTC published data reveals that trafficking for forced labour exceeds trafficking for sexual exploitation in the UK and the number of identified trafficked men has increased.⁷

The case for a comprehensive anti-trafficking law

The research found a disproportionately low number of convictions for trafficking compared to the increasing number of potential trafficked persons. The reasons for this are multiple, including trafficking not being made a priority in policing plans.

Moreover, the current system of data collection gives a confused and potentially misleading picture on how successful the UK is in tackling trafficking. Two government departments gather different statistics on trafficking prosecutions and convictions: a) the Ministry of Justice (MoJ) collects data on convictions and prosecution of trafficking where the trafficking offence charged is the principal offence on the indictment;⁸ and b) the Crown Prosecution Service (CPS) collects data from their case management system where cases involving a trafficking charge are flagged even if the trafficker is found guilty of other offences at trial and not the trafficking charge. The result is a situation, where different statistics are presented by different departments, leading to confusion over the number of perpetrators actually brought to justice for trafficking. Furthermore, conviction statistics are not disaggregated, rendering it almost impossible to ascertain how many child traffickers are prosecuted. An Anti-Trafficking Commissioner would be able to assist in this area by using their statutory power to request information and determine the correct number of prosecutions and conviction of traffickers.

The research concludes that individual trafficking offences in different pieces of legislation is unhelpful. Many CJS actors are unaware of their existence altogether or are uncertain in relation to the application of these laws. This is a particular problem in cases of labour trafficking, as the offence is housed in an immigration act. It was also found that the scattered nature of the legislation ignores the complexity of the crime.

⁴ The Anti-Trafficking Monitoring Group, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (2010), and *All Change: Preventing Trafficking in the UK* (April 2012).

⁵ A call recently taken up by the centre-right think-tank report: Centre for Social Justice, *It Happens Here: equipping the United Kingdom to fight modern slavery* (March 2013). Available at: [www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB\(5\).pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Slavery_Full_Report_WEB(5).pdf) [last accessed 12 April 2013].

⁶ UK Human Trafficking Centre, NRM provisional statistics for 2012 [Online]. Available at: www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics last accessed March 2013].

⁷ SOCA, (2012) UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011 [Online]. Available at: www.soca.gov.uk/news/462-human-trafficking-assessment-published [last accessed March 2013].

⁸ Meaning the trafficking offence has the heaviest tariff (14 years) out of the offences charge on the indictment.

Furthermore, the current legislation does not articulate protection rights for trafficked persons as required by the Convention, to ensure that all trafficked persons can access adequate protection in the CJS, particularly where the trafficked person is prosecuted for crimes they are compelled to commit by their trafficker (see below).

As Lord Bingham argued in his book *The Rule of Law*, “The law must be accessible and so far as possible intelligible, clear and predictable,” to ensure compliance with the rule of law.⁹ The dispersed nature of the law relating to trafficking offences contributes to a lack of clarity and how they should be applied. Resolution of these difficulties could be assisted by one encompassing definition and embedding protection measures into a comprehensive Act.

The ATMG concludes that a unified piece of legislation is needed to address some of the flaws and to bring the UK fully in line with the Convention and Directive. A single Act would have the combined benefit of raising awareness of trafficking offences, and simplifying their prosecution in practice. The Forced Marriage (Civil Protection) Act 2007 was introduced to address forced marriage by combining the offences and the protections. The purpose of its enactment was to raise awareness of the crime of forced marriage. The ATMG recommends that a similar approach be adopted with respect to trafficking. Furthermore, this would also assist in cases where trafficked persons are exploited for multiple purposes. The ATMG is pleased to find that Scotland and Northern Ireland have already taken steps to consider enacting a single anti-trafficking law.

Investigating trafficking

The report highlights several successful landmark cases investigated by the police and other law enforcement agencies. However, there was also recognition that this is not the case across the UK, as the overall law enforcement capacity to respond to trafficking remains low.

The culture of policing targets means that trafficking is not considered a priority and an investigation is often dependent on the good will and perseverance of individual officers. There is also a lack of tailored training to equip law enforcement officers with the specialist knowledge to effectively investigate this crime.

Worryingly, the majority of respondents confirmed that trafficked persons are frequently refused assistance when presenting at police stations and are told that their problem is not a police matter, especially in instances of labour trafficking. Undoubtedly, the fewer trafficked persons identified will inevitably result in fewer potential cases investigated and ultimately fewer traffickers convicted, thus perpetuating the criminal groups activities.

Where specialism is developed or specialist anti-trafficking units have been formed, trafficking has been tackled with greater success. Moreover, in the climate of austerity and cuts, focused and proactive anti-trafficking operations can be cost-effective. The ATMG’s research found that where large-scale trafficking operations against traffickers for forced criminality (such as petty theft and begging) were carried out, this also curbed the occurrence of low level crime.

Also, operations which proactively dismantle the whole trafficking network are more effective than a temporary disruption of its activities, which can result in not just financial savings in the CJS, but also on funding victim care. Such operations are also more likely to recover substantial assets (proceeds of crime) from traffickers where a financial investigator is involved from the beginning of the

⁹ See Bingham, T., *The Rule of Law* (2010). Also see principles 2, 4 & 8.

investigation. Recovered assets can be potentially used to fund future anti-trafficking operations, a model applied in the past to drug operations.

The research found that the EU provides some effective tools for investigating and prosecuting trafficking such as Joint Investigation Teams, European Arrest Warrants and Europol. Respondents recommend that these tools and resources should be increasingly utilised rather than put at risk. The Government is, as part of a review due to take effect in 2014, considering opting out of these EU policing and justice measures. These measures have assisted in prosecuting trafficking and their absence may significantly impede the UK's ability to effectively combat trafficking in the future, delay justice for trafficked persons and perpetuate traffickers' impunity.

Prosecuting traffickers

Several criminal justice actors play a role in criminal proceedings against traffickers. The ATMG found that trial success depends on the level of trafficking knowledge that the CPS lawyers/prosecuting advocates and judges have, as well as the support afforded to a trafficked person who is participating in the proceedings. Until a combination of adequate victim-witness support and protection, and competent presentation and handling cases in court is achieved, many traffickers will continue to enjoy impunity.

The ATMG was presented with a number of examples where traffickers were successfully prosecuted, such as *R v Anthony Harrison*,¹⁰ *R v James and Josie Connors*¹¹ and *R v Hassan and others*.¹² Where such successes occurred, they were largely due to a specialist or experienced CPS lawyer/prosecuting advocate who understood the intricacies of trafficking.

Trafficking is likely to be well outside of the experience of most of the general public, hence positive outcomes may also depend upon the knowledge of the judge and the prosecutor to convey this complex crime to the jury.

The research found a lack of knowledge and understanding of trafficking and how it impacts on trafficked persons across prosecutors and the judiciary, potentially impacting on the positive outcome of cases. Research contributors suggested the development of specialist prosecutors for trafficking cases, similar to those who are accredited to prosecute rape cases.

The research also revealed that despite the importance of victim support and protection measures for a successful prosecution, these are often not in place. Interviewed respondents stated that trafficking trials may have collapsed due to poor victim support/contact or due to the trafficked person having suffered secondary victimisation due to invasive questioning.

Non-criminalisation of trafficked persons

The Convention and Directive establish a legal right for trafficked persons not to be prosecuted and/or punished for crimes that they commit as a consequence of their trafficking.

The research pointed to many instances where trafficked persons were misidentified as offenders, and were subsequently prosecuted and convicted. The continued criminalisation of trafficked persons (including those who were trafficked for drug offences and those who were given false documents by their traffickers) was raised as a widespread problem by respondents.

¹⁰ *R v Anthony Harrison* at Woolwich Crown Court, July 2011.

¹¹ *R v John and Josie Connors* at Luton Crown Court, July 2012.

¹² *R v Hassan and others* at Liverpool Crown Court, 9 May 2012

The ATMG was made aware of some cases where trafficked children were re-trafficked to another cannabis factory on release from Young Offender Institutions. The ATMG is concerned that the present practice may have the effect of a “revolving door”, leading to re-victimisation of vulnerable trafficked children and young persons.

The ATMG concludes that the current regime in which non-criminalisation provisions are implemented through policy (e.g. CPS guidance) allows for the arbitrariness of decisions that lead to many trafficked persons being prosecuted, hence undermining basic principles of rule of law.

There are a range of professionals that come into contact with trafficked persons within the CJS. The research identified at least seven stages of the process at which identification can arise. If identification occurs at an early stage, especially during the pre-charge period, the criminalisation of trafficked persons can be prevented and the CJS can focus on the underlying problem – the crime of trafficking. However, the research found that the identification of trafficked persons often occurs at a very late stage in the process i.e. post-conviction.

Specific issues relating to child trafficking

There was a general consensus among interviewees that child trafficking has a lower profile than adult trafficking which may affect prosecution numbers. There are also distinct barriers to identifying trafficked children in frontline practice. Investigating and prosecuting child trafficking can be more complicated. Children generally do not report crime, especially against family members. It is for these reasons that the Convention obliges frontline competent authorities to be proactive in identifying trafficked children.

The research found that some stakeholders are reticent to allow trafficked children to participate in trafficking investigation or prosecutions, because this may not be in the child’s best interests due to the potential detrimental impact on an already vulnerable child giving evidence in court. Therefore, this limits the number of convictions where the child’s testimony is crucial to the prosecution. Other complications result from a failure by concerned agencies to adhere to the benefit of the doubt principle when age assessing age-disputed children.

The key principles of best interests, non-discrimination and the child’s rights, as contained in the Convention and Directive, must be adhered to at all stages of a criminal investigation into child trafficking. Furthermore, child trafficking is child abuse: this is a message that must be central to the UK’s criminal justice response to trafficking in order to successfully safeguard vulnerable trafficked children while delivering justice to those who seek to exploit them.

Prosecuting trafficking in devolved administrations

Criminal justice is a devolved matter within the responsibility of the governments of Scotland and Northern Ireland. Despite this, these regions face similar problems to England and Wales as thus far each country has seen only two prosecutions for trafficking offences.

A potential positive development was seen in Scotland in April 2013, when a single police force was created with a specialised unit that will focus on investigating trafficking across Scotland. Northern Ireland, on the contrary, has disbanded its specialised unit within the Police Service of Northern Ireland. Given the proven success of other specialised police units, which have adequate funding and a clear mandate, this may prove to be a retrogressive step.

Conclusion

The ATMG research found localised good practice and excellent examples of individual work by police and criminal justice actors. This good practice needs to be rolled out across the UK to mitigate the

current system which allows the majority of traffickers to escape justice. Despite the Government's declaration, the UK is far from being a hostile environment for traffickers. An integrated and cost-effective approach to investigating and prosecuting trafficking needs to be introduced that focuses on trafficking as a priority, takes into account the complexity of the crime, and ensures that traffickers, rather than victims, are the ones put behind bars.

KEY RECOMMENDATIONS

OVERALL

Introduce a UK Anti-Trafficking Commissioner, an independent body with statutory powers to request data and information, to examine the trends and changing nature of trafficking and to recommend a focused and efficient strategy to combat this crime.

LEGISLATION

- Enact a single Act on human trafficking and other forms of contemporary slavery to cover the offences and victim protections (including the non-criminalisation provision).

DATA COLLECTION

- Create a unified data collection system that includes all prosecutions and convictions of traffickers, regardless of the final offence charged. Also, disaggregate data by age and gender.

INVESTIGATION

- Trafficking shall be made a priority and included among policing targets set by the Home Secretary.
- Specialist anti-trafficking and multi-agency units have the dual benefit of success and potential for cost-effectiveness. Where possible, these shall be formed and maintained. A single specialist unit operational across England and Wales, similar to the Metropolitan Police and Scottish model should be considered.
- All frontline police shall receive basic training on trafficking. Guidance should be available at all police stations to stop the practice of declining assistance to trafficked persons wishing to report trafficking.

PROSECUTION

- Ensure that all CPS lawyers, prosecuting advocates, judges receive training on trafficking laws and the nature of the crime.
- Develop specialist CPS lawyers and judges, similar to the *rape-ticketed* model.
- Ensure that trafficked persons are supported throughout and after criminal proceedings. Readily provide, where necessary, efficient special measures including witness protection.

NON-CRIMINALISATION

- ACPO to issue guidance, without delay, on the treatment of suspects that may be trafficked persons.
- MoJ to issue guidance for prisons on identification and treatment of prisoners who might be victims of trafficking.

CHILD TRAFFICKING

- Bring UK trafficking legislation in line with the UNCRC's child definition as under 18s, and clarify the word "young" in Section 4(4)(d) of the AI(TC) 2004 replacing it with under 18s.
- Ensure all suspected cases of child trafficking are investigated fully, strictly utilising s.47 of the Children Act 1989 to trigger multi-agency inquiries and ensure the prosecution of an offence for a sufficient period of time after the trafficked child has turned 18.

- Introduce mandatory child-specific trafficking training for frontline staff which is reviewed and updated regularly to improve identification of trafficked children and safeguarding responses.
- Increase proactive police investigations into child trafficking supported by increased government resources, and increase the use of victimless prosecutions in child trafficking cases.
- Appoint a legal guardian to each suspected trafficked child in order to act in the child's best interests and to act as a link between the multiple agencies involved in prosecuting child trafficking.

Introduction

This report, the third in The Anti-Trafficking Monitoring Group (ATMG) series,¹³ examines the prosecution of trafficking through the UK Criminal Justice System (CJS).¹⁴ The ATMG was established in 2009 to correspond with the entry into force of the *Council of Europe Convention on Action against Trafficking in Human Beings* (the Convention),¹⁵ to monitor the UK's compliance with the Convention's obligations. The ATMG also includes the newly enacted *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (the Directive) in its monitoring function.¹⁶ This report endeavours to determine the degree to which the UK Government has fulfilled its obligation to effectively prosecute trafficking offences, with reference to Chapters IV and V of the Convention and the relevant Articles of the Directive. It also presents examples of good practice from the UK and abroad wherever possible.

As both the Convention and the Directive were crafted in accordance with a victim-centred human rights-based approach, the report also strives to incorporate, where relevant, the *Principles and Guidelines on Human Rights and Trafficking*¹⁷ of the United Nations Office of the High Commissioner for Human Rights (OHCHR).

Whilst recognising the interconnectedness of prosecution, prevention and protection (the 3P's)¹⁸ and the importance of combining efforts in each of these areas to establish an effective response to trafficking, this report focuses mainly on the investigation and prosecution of trafficking in the UK - an area with little analysis so far.

Whilst human trafficking is a serious violation of human rights, it is also a serious crime. It is, therefore, essential that the UK's criminal justice response is exemplary and that prosecuting traffickers is put at the heart of the UK's national response. An increase in successful trafficking prosecutions is needed to end the traffickers' impunity, which has thus far allowed this crime to flourish. Convictions and sentences commensurate with the seriousness of the crime, coupled with seizure of the criminal assets will also act as a deterrent for traffickers in the future.

The ATMG found that the criminal justice response to trafficking is currently disjointed and identified a number of issues at every stage of the CJS. While the research identified examples of localised good practice and outstanding work by the police, prosecutors and judges that led to trafficking convictions, this practice is yet to be scaled up across the UK to create a hostile environment for traffickers as envisaged by the Government.

In the following ten chapters, the UK's criminal justice response to trafficking is examined in terms of law, policy and practice. In particular the report explores:

- Effectiveness of trafficking investigations and prosecutions;
- Obstacles that impede criminal justice responses to trafficking;

¹³ Others include: The Anti-Trafficking Monitoring Group, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (2010) and, *All Change: Preventing Trafficking in the UK* (April 2012).

¹⁴ The prosecution of trafficking is interpreted in this report as an umbrella term encompassing the many organs of the CJS and describing the process of collaboration and response between CJS agencies such as the police, the United Kingdom Human Trafficking Centre (UKHTC), the Crown Prosecution Service (CPS), the courts, prisons and probation service.

¹⁵ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005. Hereinafter known as the "Convention".

¹⁶ With the UK's opt-in to the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the ATMG undertook to include the Directive in its monitoring function. Full title: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011]. This EU Directive replaces Council Framework Decision 2002/629/JHA. Hereinafter known as the "Directive".

¹⁷ UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1. Available at: www.unhcr.org/refworld/docid/3f1fc60f4.html [last accessed 2 April 2013]

¹⁸ See *All Change*, *supra* note 13, pp.21-22.

- The UK's ability to meet the obligation to protect victims involved in criminal proceedings;
- Adherence to the requirement of non-criminalisation of trafficked persons.

Methodology

This research focused on assessing the criminal justice response to trafficking between April 2009 and November 2012, although, where efforts introduced before 2009 still had a bearing, they were also considered. Desk-based and field research for this report took place between August and November 2012. A literature review was carried out to examine relevant publications, national and international legislation, legal guidance and case law. The ATMG Researcher and members also attended workshops, seminars and presentations on trafficking prosecutions and trafficking-related issues and observed criminal court cases. ECPAT UK was responsible for the research on child trafficking prosecutions, and the information provided for the chapter on devolved approaches to prosecuting trafficking in Scotland and Northern Ireland derives from TARA and an immigration solicitor respectively.

Selective sampling using contacts identified through the ATMG members' networks were used to select research participants with specialist knowledge on prosecuting trafficking, which led to *snowball* sampling and the selection of other relevant stakeholders. In total, 49 semi-structured interviews and four focus groups were undertaken, and seven written responses were collected; involving 82 participants in the following categories: government agencies; legal practitioners, including barristers, prosecutors and a recently retired judge; law enforcement, including police officers and detectives; service providers; and researchers. To preserve the anonymity of the interview participants they will be generically referred to as, and unless otherwise stated, law enforcement officer, legal practitioner, and service provider. Furthermore, ATMG service providers conducted interviews with 12 trafficked persons to allow for their participation and to understand their experiences of the CJS. Interviews were planned and carried out in a manner that was sensitive to the needs of the trafficked persons, with a particular awareness of the distress that may be caused through recounting their experiences.

Report structure

The report is organised into ten chapters and four annexes:

- Chapter 1 provides a brief background to trafficking in the UK;
- Chapter 2 details the current legislation criminalising trafficking in England and Wales;
- Chapter 3 looks at prosecution and conviction statistics;
- Chapter 4 details law enforcement capability to identify trafficking;
- Chapter 5 discusses law enforcement efforts in investigating trafficking;
- Chapter 6 focuses on the importance of multi-agency and international partnerships;
- Chapter 7 explores trafficking trials with particular reference to the difficulties faced by court in dealing with trafficking cases;
- Chapter 8 examines the implementation of the obligations not to prosecute or punish victims for crimes they have committed as a direct consequence of their trafficking;
- Chapter 9 addresses the prosecution of child trafficking;
- Chapter 10 examines the prosecution of trafficking in Scotland and Northern Ireland.

Annexes:

- Annex I presents the UK's legislative framework for trafficking and forced labour;
- Annex II features successful trafficking prosecutions from 2009 to 2013 detailing the defendants; exploitation type, investigating force, offences, sentence, judge, prosecutor and court;
- Annex III introduces the CPS's *Seven Stages of Intervention for a Victim of Trafficking who may be Criminalised* model, which can be applied in cases where the trafficked person is at risk of prosecution for crimes committed as a direct consequence of their trafficking;
- Annex IV reproduces the Criminal Case Review Commission's leaflet which details the Commission's role in reviewing trafficking cases where victims have been criminalised.

Chapter 1: Trafficking in the UK

Extent of the problem

As in all countries, the landscape of trafficking in the UK evolves constantly. Over 2011 and 2012 some significant developments occurred. In 2011, the UK Human Trafficking Centre (UKHTC) conducted a *Baseline Assessment*¹⁹ on trafficking which recorded 2,077 potential trafficked persons,²⁰ including those who were referred to the National Referral Mechanism²¹ (NRM) and others who were not referred but were identified by non-governmental organisations (NGOs) who participated in the request for intelligence.

The provisional 2012 NRM statistics alone are said to have increased by 25% on the 2011 figures, which are higher than previous years.²² Furthermore, according to the UKHTC, the referrals in the first months of 2013, yet to be published, are said to exponentially exceed the 2012 levels. The reasons for the continued increase may be interpreted in two ways: as a result of improved identification and greater reporting; or a reflection of a genuine increase in trafficking. Either way, it appears that there is an upward trajectory in trafficked persons identified.

In the 2011 baseline assessment, 54% of trafficked persons were female, 40% were male, and with 6% of trafficked persons' gender unknown.²³ The assessment further revealed that labour trafficking (50% including domestic servitude and forced criminality) is more prevalent, and that more men are being identified as trafficked persons.²⁴ The latest statistics appear to debunk the myth that trafficking primarily involves women and sex, as trafficking for sexual exploitation accounts for 31% of the 2011 figures. 2012 also saw the first recorded cases of organ trafficking for kidney transplants,²⁵ while an NGO also reported a case of trafficking for a woman's ovum.

Nature of the problem

Trafficked persons were found to be exploited for their labour in numerous areas, such as factory work, delivering leaflets, food processing, restaurants, hotels, construction, and through forced criminality, including cannabis cultivation (see Chapter 8). Trafficking for sexual exploitation occurs predominantly in off-street brothels both in the commercial setting of massage parlours, hotels and restaurants (which double as brothels), and also in private residential premises. However, NGOs reported a rise in the number of trafficked Romanian females forced into on-street prostitution showing changes in previous patterns. Despite reports from NGOs for a number of years, the *UKHTC baseline assessment* recorded for the first time in 2011 that men were potential victims (6%, 38 people) of trafficking for sexual exploitation.²⁶ The Metropolitan Police Service (MPS) reported men forced to work in an illegal casino to provide sexual service to patrons in the breaks.²⁷ This is a somewhat neglected and sidelined issue with government responses and services tailored towards females trafficked for sexual exploitation.

¹⁹ SOCA, (2012) UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011 [Online]. Available at: www.soca.gov.uk/news/462-human-trafficking-assessment-published [last accessed March 2013].

²⁰ *Ibid.*, p.6.

²¹ The NRM is a mechanism that seeks to identify trafficked victims in a two-stage test: reasonable grounds and conclusive grounds decisions made by the Competent Authorities. Once a victim has received victim status they are entitled to receive protection, support and assistance through the Ministry of Justice's service provision contract managed by The Salvation Army and executed through its sub-contractors. See *Wrong King of Victim*, *supra* note 13.

²² UK Human Trafficking Centre, NRM provisional statistics for 2012 [Online]. Available at: <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics> last accessed March 2013].

²³ This anomaly may in part be due to a lack of robust data collection or reflect transgendered victims.

²⁴ SOCA, *supra* note 19, p.8. *Correction made to statistic.*

²⁵ Evans, M 'First case of people trafficking for organs uncovered in UK' The Telegraph. 25 Apr 2012 [Online]. Available at: www.telegraph.co.uk/news/uknews/crime/9227137/First-case-of-people-trafficking-for-organs-uncovered-in-UK.html [last accessed March 2013].

²⁶ SOCA, *supra* note 19, p.9.

²⁷ The Observer "Rise in 'slavery' trafficking of homeless by gangs" The Observer on Sunday. 30 September 2012 [Online]. Available at: www.guardian.co.uk/theobserver/2012/sep/30/slavery-homeless-trafficking-gangs?newsfeed=true [last accessed March 2013].

Traffickers' primary motivation is financial, and they are very creative in finding new forms of exploitation to generate profits. For instance, multiple exploitation, where trafficked persons are exploited for several purposes (e.g. for forced labour during the day and sexual exploitation in the evening) was identified in 5% of all cases in the *UKHTC assessment*.²⁸ Several emerging trends, or rather actions that are beginning to be recognised as trafficking were presented to the ATMG, such as the trafficking of whole families, involving sexual exploitation of women, forced labour of men and fraudulent benefit claims made for children.

Other cases involved forced labour where traffickers also made fraudulent benefit claims in the trafficked persons' names, using their identification documents. The monies were then paid into the trafficker's bank account, which may render the trafficked persons liable to prosecution.²⁹ Trafficking experts debate whether trafficking for benefit fraud alone is exploitation under the definition. However, the cases presented to the ATMG suggest that benefit fraud is used alongside other forms of exploitation. Also the Directive's trafficking definition may be construed to include it, as Recital paragraph 11 of the Directive states that "[t]he expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain."³⁰ The phrase "other similar activities" implies that as long as the other elements of trafficking are present, exploitation for benefit fraud may be interpreted as trafficking. Such fraud may also remove the trafficked person's right to claim benefits in their home country under EU reciprocal agreements to claim benefits,³¹ which may lead to hardship and a risk of re-trafficking.

Traffickers may also profit from forcing trafficked persons who are EU citizens to enter into sham marriages with non-EU nationals who pay for this privilege with a view to applying for a UK visa. Another emerging trend is for traffickers to operate legal businesses, such as nail bars, as fronts to launder money from exploitative activities. Such activities are often linked with brothels, sometimes on the same premises as the nail bars, and cannabis factories. In this setup, trafficked persons may be required to work in more than one area in order to repay debts incurred.

Traffickers

Literature on trafficking tends to focus on the trafficked person rather than the trafficker. The limited extant knowledge outlines basic demographic information on the perpetrators. Traffickers operating in the UK are both male and female, although one sex often dominates certain nationalities. Indeed little is known about the role of women in trafficking. Some experts also argue that the role that diaspora communities play is under-explored.³² They may play a significant part in enabling traffickers' operations including facilitating movement through transit countries as well as shadowing such activities where law enforcement finds it difficult to penetrate minority communities, serving to "camouflage potentially important nodal points of international connectivity".³³ The age of traffickers also varies.

Some traffickers maintain a low profile by working in legitimate employment and lead a modest life to cloak their illicit activities, seemingly blending into the community without raising suspicions. For instance Osezua Elvis Osolase, who trafficked Nigerian minors, worked at a recycling plant, lived in a modest house and drove an inexpensive car, while it is estimated that he may have accrued £1.5

²⁸ SOCA, *supra* note 19.

²⁹ Information received through research interviews from participants who work with victims of labour trafficking.

³⁰ Emphasis added.

³¹ Reciprocal Agreements are formal treaties that help coordinate the welfare benefit systems of the respective contracting countries. The primary aim is to help people move from one country to another, obtaining benefits due and also in some cases regulating the payment of social security contributions. See www.dwp.gov.uk/international/moving-to-another-country/moving-to-another-eea-country/.

³² Turner, J., & Kelly, L. "Trade Secrets, Intersections between Diasporas and Crime Groups in the Constitution of the Human Trafficking Chain". *British Journal of Criminology*, Vol. 49 (2009) pp.184–201.

³³ *Ibid.*, p.198.

million from trafficking.³⁴ Non-EU traffickers have also been known to marry EU nationals to regularise their status in the UK and continue their activities. Others may be in the UK illegally.

Academics describe human trafficking as a “monopolistically competitive industry” which employs the economic models used in globalised markets.³⁵ In other words, traffickers’ behaviour is driven by the desire to maximise profits. Human trafficking is a particularly lucrative business and may be selected over other crimes such as drug trafficking as one interviewed participant stated, “[human trafficking] victims are equal to a kilo of cocaine but they’re even better ... because you can use them time and time again. So, they don’t lose their value”. In most businesses, labour forms a large part of the business costs. Through exploiting trafficked persons by paying them little or no wages or extracting excessive labour, traffickers lower their overheads. It was reported that traffickers also embed themselves into the complex hierarchical structures of employment agencies where, due to a lack of regulation, the exploitation of employees may be more likely. For instance, in one case known to the ATMG, new starters’ bank accounts were tied to the same bank account of the exploiter working at the employment agency.

It can be said that there is no particular typology of traffickers or trafficking. However, as one study found “networks are ... able to develop and adapt to changing circumstances: they are able to learn from previous mistakes,”³⁶ demonstrating that traffickers can be highly intelligent and agile within any jurisdiction they choose to operate.

The known *modi operandi* of traffickers point to certain types of organisational structures - the OSCE identifies three such structures of trafficking networks, each of which is fluid and can traverse into another over time. These are (1) soloists or individuals; (2) loose networks of organised criminals; and (3) highly structured international trafficking networks.³⁷ Some trafficking network structures may be closed, involving only family members and friends. Family trafficking networks can be intergenerational. Others constitute foreign criminals who join indigenous criminal groups to improve operational effectiveness. Other trafficking structures comprise members of the same nationality and ethnicity.³⁸

Within these structures there are individuals who are responsible for carrying out all trafficking activities outlined below, while others divide and assign tasks to different members. These tasks can be separated into the following categories:

- Investors – finance trafficking operations;
- Recruiters – befriend and enter into romantic or platonic relationships to gain the trafficked person’s trust;
- Transporters – assist or accompany the trafficked person through the source country and/or transit to destination countries;
- Corrupt public officials or protectors – accept bribes in exchange for protection from prosecution and assistance;
- Facilitators – research the best possible guides and crew members who assist the trafficked person in entering and travelling in the destination country;
- Enforcers – manage the exploitation and maintain control;
- Debt collectors – collect the earning from each site of exploitation;

³⁴ Peachey, P. ‘Jailed: the slave trader in Britain who sold women around Europe for sex under the spell of his ‘juju’ witchcraft’ *The Independent*, 26 October 2012 [online]. Available at: www.independent.co.uk/news/uk/crime/jailed-the-slave-trader-in-britain-who-sold-women-around-europe-for-sex-under-the-spell-of-his-juju-witchcraft-8228574.html [last accessed March 2013].

³⁵ Wheaton, E, et al. “Economics of Human Trafficking”. *International Migration*, Vol. 48:4 (2010) p.117.

³⁶ Leman, J, & Janssens, L. “The Albanian and Post-Soviet Business of Trafficking Women for Prostitution: Structural Developments and Financial Modus Operandi”, *European Journal of Criminology*, Vol. 5:4 (2008-10) pp.433-45.

³⁷ Aronowitz, A., at el, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (OSCE: 2010), p.21.

³⁸ *Ibid.*, pp.21-22.

- Money launderers – turn profits into legitimate funds usually by investing it into property or legal business;
- Supporting personnel and specialists - offer accommodation during transit or occupy legitimate occupations such as immigration lawyers or translators.³⁹

Continuum of control exerted by traffickers over victims

To exact labour or services from a person, the traffickers must achieve control of the person. To do so, traffickers engineer a continuum of control by abusing trafficked persons' vulnerability, using methods such as deception/fraud, coercion or imprisonment. They may also be used in combination.

Current research indicates that traffickers rely less on imprisonment or confinement of trafficked persons and favour the more subtle, sophisticated and particularly effective psychologically coercive techniques to imprison the victim's mind rather than their physical self.

Such a coercive process employs different "techniques" to achieve victim disempowerment and disconnection from reality.⁴⁰ The methods employed by traffickers are not new or distinct but rather a reconditioning of techniques utilised across history where control of another person is the key objective with "the methods that enable human beings to enslave another ... remarkably consistent."⁴¹ Comparisons can be drawn across groups of survivors of torture,⁴² hostages, political prisoners, survivors of concentration camps, those who are domestically abused and cult members.⁴³

Dr Michael Korzinski, the former clinical director of the Helen Bamber Foundation, describes the totality of the process as dehumanising, "designed to deconstruct the person's sense of identity ... [and] take the person back to earliest stages of development in a process of enforced psychological regression".⁴⁴ In doing so, as one research participant stated, the trafficked person becomes a self denying commodity as a consequence of coercive techniques used by traffickers, resulting in the trafficked person coming to accept without question that they have become a commodity, rather than an autonomous person, let alone a victim.

The foundations of control may previously have been laid by the careful selection of a vulnerable person deemed to possess particular traits which renders them more vulnerable to subjugation and control. They may be especially vulnerable due to external factors of poverty, a lack of education, a harsh traditional upbringing, domestic abuse, abandonment as a child; or internal factors such as age, learning disability or substance addiction. Traffickers are particularly attuned to identifying such individuals.

The cycle of abuse theory developed by Lenore Walker⁴⁵ is particularly pertinent to understanding why certain people appear to be targeted by traffickers, as a consultant psychologist interviewed for the research stated, "*if you have been subject to enough cruelty for long enough you find it difficult to believe it is over ... it becomes normal for you if experienced in childhood*".

Various instruments of subjugation may be introduced according to the type of exploitation and the context it occupies. However, the trafficking process may have been initiated by the use of deception or fraud as to the type of work, conditions and pay. When the reality of the trafficking situation becomes apparent and the trafficked person begins to resist, actual violence may be used. As the

³⁹ *Ibid.*, pp.22-23.

⁴⁰ Herman, J. *Trauma and Recovery: The aftermath of violence – from domestic abuse to political terror* (1997)

⁴¹ *Ibid.*

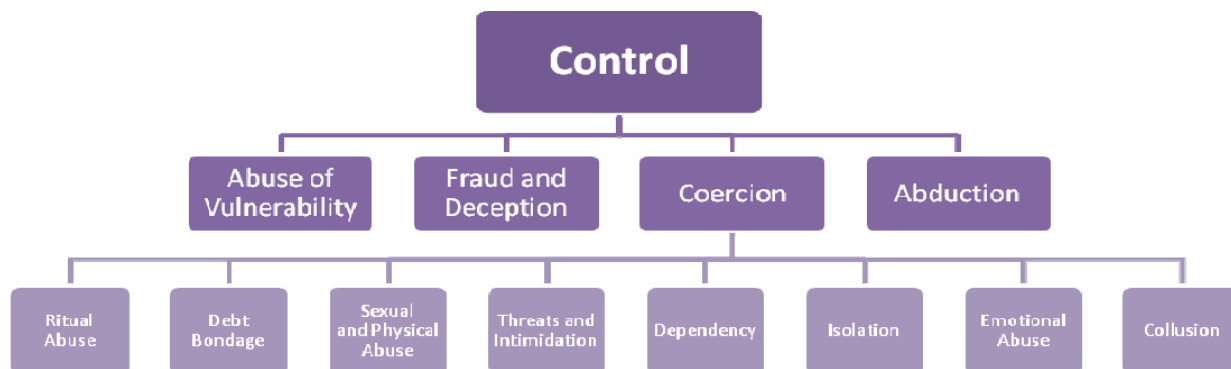
⁴² OSCE OSR/CTHB in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, *Trafficking in human beings amounting to torture and other forms of ill-treatment*, Occasional Paper Series (forthcoming).

⁴³ Herman, *supra* note 40, p.76.

⁴⁴ Korzinski, M. (2011) 'Identifying and Responding to Trauma in Victims of Trafficking and Exploitation' p.71, in Chandran, P. (eds), *Human Trafficking Handbook: Recognising Trafficking and Modern-Day Slavery in the UK*.

⁴⁵ Walker, L. *The Battered Woman* (1979).

trafficking continues and previously applied methods become fruitless, threats against family may be introduced.⁴⁶ The mechanisms of control and how they are employed by traffickers are explained below:



Ritual abuse

Ritual abuse can be understood as any repeated, systematic abuse within a cult or other controlling group, or in the name of a belief or ideology. Ritualistic abuse frequently combines mental, physical, emotional and spiritual abuse in order to condition every aspect of the trafficked person’s life.⁴⁷ The most common form reported in the UK, is the use of Juju (distinguishable from Voodoo)⁴⁸ to control Nigerian trafficked persons. Juju is a West African form of witchcraft. It refers to the supernatural power manifesting from spirits being ascribed to objects and in the use of spells. Although traditionally a benign belief system, entrepreneurial priests have manipulated it for darker purposes. The Juju priest is called upon to bind a trafficked person to comply with their trafficker or enforce contract terms. The ritual generally consists of cuts to their body, taking of blood, hair and clothing and swearing oaths. This is believed to allow spirits to enter the victim’s body. The priest or trafficker retains the parts of the victims’ body, making the victim believe that they can control the spirits that inhabit them from afar. This method has proved particularly effective due to the potent fear of the power of the spirits to cause harm, should the trafficked person not comply with the oath.

Tension exists between the victim’s strong beliefs in this system, and “those in more developed countries tend[ing] to view witchcraft as diametrically opposed to a rational, science-based view of the world.”⁴⁹ This tension creates a substantial challenge for CJS actors understanding the role of such practices in trafficking and the reasons why trafficked persons may behave in a certain fashion.

Debt bondage

Debt bondage is the situation where a loan, usually, but not exclusively, for travel is secured against the receiving person. The lender chooses and controls the services that will be carried out by their trafficked person to repay the loan. Trafficked persons themselves may believe that they are responsible for repaying the loan as they entered into it willingly. However, the terms of the loan are manipulated by traffickers. Often the debt will be increased by fictitious and/or inflated charges, or by heavy wage deductions (for accommodation, transport to and from work, food, etc.). This is carried

⁴⁶ UNODC, ‘Module 4: Control Methods in Trafficking in Persons’ in, UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (2010), pp.1-2 [online]. Available at: www.unodc.org/documents/human-trafficking/TIP_module4_Ebook.pdf [last accessed March 2013].

⁴⁷ Survivorship, *What Do We Mean by Ritualistic Abuse?* [online]. Available at: www.survivorship.org/_wp/what-is-survivorship/ [last accessed March 2013].

⁴⁸ The Government wrongly conflates the two concepts: “In some cases involving Nigerian victims Ju-Ju/ Voodoo rituals have reportedly been used to coerce and control the victim”. Home Office, *First annual report of the Inter-Departmental Ministerial Group on Human Trafficking*, pp.27-28 [online]. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/118116/human-trafficking-report.pdf [last accessed March 2013].

⁴⁹ Harrop, E., *Ties that bind: African witchcraft and contemporary slavery*, 17 September 2012 [online]. Available at: www.lastradainternational.org/Isidocs/Witchcraft%20and%20Trafficking%20in%20Africa.pdf [last accessed 11 March 2013].

out to perpetuate the exploitative situation for an indeterminate period. An interviewed clinical psychologist experienced in counselling trafficked persons explained:

“What the trafficker does is move the ... tunnel [of light] further and further and there are fairly standard things that they say: “you will be a prostitute and you will make so much per client and you will pay me so much and that will go to paying off your debt. And then you have to pay rent and the bills as well as maintaining your nails and your fake tan”. Arbitrary things can be added so the tunnel just gets longer, but it's still a tunnel and there's still light at the end. I think it's terribly powerful because the victim may believe if they work faster maybe [they] can get there. It's very simple psychology that any reinforcement is more effective ... coupled with an intense craving to get to the end and a lack of acceptance that it is impossible to achieve”.

Sexual and physical abuse

Violence may be employed at any stage of the trafficking process. However, many trafficked persons have reported a single episode being carried out near to the beginning. The person may be either raped (known as “seasoning”) or badly beaten. The trafficker does this to achieve early compliance by exhibiting their power before initiating a process of longer-term conditioning.

The trafficker may also strip the individual of their prior identity by removing personal possessions and or forcing them to wear a “uniform”. In *R v John and Josie Connors*,⁵⁰ involving vulnerable men in servitude, it was reported that the victims' heads were shaved and were given overalls to replace their clothes.⁵¹ Head shaving may arguably have been carried out for hygiene purposes, but it is interesting that such techniques are employed to dehumanise and erode personal autonomy.⁵²

Traffickers have also been known to administer extreme violence if trafficked persons are defiant towards their commands. However, it has been reported that traffickers are moving away from inflicting physical injuries, as this makes it more likely that they could be prosecuted for offences such as grievous bodily harm or assault.

Threats and intimidation

Not all trafficked persons will be assaulted; as one experienced law enforcement officer stated:

“[W]ithin that group [of female trafficked persons], you may have 90% of the women who may go along with it and nothing particularly violent will happen to them, they won't be raped, they won't be beaten but they kind of give in to it very, very quickly ... However, there is a small percentage of them ... who are subjected to violence because they are probably the ones who speak out.”

Observing violence against other victims is often enough to make others comply with their trafficker's demands. Traffickers make an example of certain individuals to create fear in the rest of the group. Indeed observing the torture of others can lead to others experiencing symptomatology of post-traumatic stress disorder and other psychological complications (see below).⁵³ Again in *R v John and Josie Connors*, one victim would be beaten in front of the others to demonstrate the consequences of non-compliance. Victims would also be forced to fight each other while the exploiters' friends placed bets. It is also known that fighting dogs are used to intimidate workers into compliance.

If the trafficked person is an irregular migrant in the UK, unaware of their rights, they may be threatened with being reported to the authorities. In one case presented to the ATMG, the trafficker dressed in a police uniform raped the victim to reinforce fear of the authorities, and generate the belief

⁵⁰ *R v John and Josie Connors* at Luton Crown Court, July 2012.

⁵¹ Judiciary of England and Wales, *R - v - James John Connors and Josie Connors, Sentencing Remarks of HHJ Michael Kay QC 12 July 2012 Luton Crown Court*. (2012). Available at: www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/james-connors-josie-sentencing-remarks-12072012.pdf [last accessed 11 March 2013]

⁵² Herman, *supra* note 40, and also see Zimbardo, P., *The Lucifer Effect: Understanding How Good People Turn Evil* (2007).

⁵³ OSCE OSR/CTHB *Trafficking in human beings amounting to torture and other forms of ill-treatment*, *supra* note

of corruption within the UK police. Threats against family members were identified by the majority of interviewed participants as a powerful tool employed by traffickers. Traffickers may invest time in befriending the trafficked person before they are exploited to gain details of their family so that this information can be used against them when necessary. Also, in cases of domestic servitude it is common for an employer to threaten the trafficked person with reporting them to the police for stealing if they escape.

Dependency and isolation

Traffickers are particularly adept at engineering circumstances where the trafficked person is effectively isolated and totally dependent on them. They provide accommodation and subsistence which counts towards maintaining control. Often, trafficked persons were made to believe that they were not paid because the trafficker stated that they were saving their wage on the trafficked persons' behalf. Trafficked persons may also feel unable to leave the exploitative situation as they may not speak the language, have nowhere to go or any means of support. This is compounded where the trafficker withholds their passport.

In addition, their accommodation or workplace may be closely monitored by CCTV or guards, transport to and from work may also be controlled, serving to reinforce their feelings of isolation and helplessness. The traffickers may further debilitate the victim by offering addictive drugs or alcohol, or sustaining prior addictions, albeit rationing such privileges so as not to prevent them from being able to work. Contact with the outside world, including from friends and family, may be discouraged or strictly controlled. Trafficked persons may be frequently moved to avoid detection but also to disorientate them so they are less inclined to attempt to escape.

Emotional abuse

Trafficked persons may perceive themselves to be in a relationship with their trafficker/s and may not identify themselves as such. The trafficker may tell the trafficked person that they are a part of the family and force them to address them using familial names such "auntie" or "uncle". Relationships between a trafficker and the victim may be that of boyfriend-girlfriend (lover boy syndrome)⁵⁴ or parent-child. Female victims can be asked to "prove" their love by doing something they would not normally consent to in order to manipulate this emotional attachment. Such control has many parallels with some forms of domestic abuse. One method employed is of intermittent rewards, which has also been associated with other abusive situations, such as domestic abuse. This method has been shown to be particularly effective in maintaining control and reducing the likelihood of the trafficked person attempting to leave the situation.⁵⁵ Trafficked persons may be particularly vulnerable to this type of control if they have been in abusive relationships and/or suffered inter-personal violence in the past.⁵⁶ In the Helen Bamber Foundation's clinical experience, trafficked persons have very similar symptom profiles to adult victims of past childhood sexual abuse. These include fundamental problems with trust, an impaired sense of autonomy and difficulties imagining any future for themselves.

Collusion

This method can have a significant psychological impact upon the trafficked person to invoke the belief that they are in some way responsible for their situation e.g. if they knew they were going to work as a prostitute but are deceived in terms of number of clients per day, working hours and sexual acts to be performed. They may believe that they are benefiting from their exploitation, for instance, by being given a small amount of "hush" money. If forced to undertake criminal activities they may feel guilty and undeserving of assistance. Korzinski notes that a victim's belief that they "had a hand in

⁵⁴ UNODC, *supra* note 46.

⁵⁵ Korzinski, *supra* note 44.

⁵⁶ Dutton and Painter 'Emotional Attachments in abusive relationships: A test of traumatic Bonding Theory' *Violence and Victims* Vol. 8:2 (1993), pp.105-120.

[their] own enslavement” is as fundamental to “breaking” the person as is whatever additional brutality meted out against the victim”.⁵⁷ Such a belief again may affect the trafficked person’s ability to ask for assistance.

Health consequences of trafficking

A lack of knowledge prevails on the health consequences of trafficking. Existing research tends to focus on women and girls. However, a small body of evidence has pointed to numerous and concurrent poor health outcomes experienced during and after trafficking for both sexes.⁵⁸ It is also arguable that abuse consistent with trafficking exemplified worldwide produces universal consequences for trafficked persons regardless of their nationality or place of exploitation.

Tangible effects to the body include injuries such as scarring,⁵⁹ bruising and broken bones resulting from violent physical abuse for non-compliance or from work-related accidents. Common symptoms experienced by trafficked persons include stomach pains, headaches, back pain, teeth problems, infections, chronic back pain, respiratory problems, exhaustion and malnourishment. As mentioned previously, trafficked victims may also present with dependencies to alcohol and drugs. The use of these substances may also be used as an individual coping mechanism after the trafficked person has left the exploitative situation. In particular, service providers stated that alcohol was regularly used by men as a way of self-medicating to manage their trauma. Additionally, persons trafficked for sex may be infected with sexually transmitted diseases, become pregnant or suffer from other gynaecological or urological problems.

While the physical signs may be easily treated and fade, it is reported that trafficked persons can continue to experience myriad mental health problems such as shame, guilt, low self-esteem, depression, memory loss, eating disorders, and anxiety.⁶⁰ Trafficked persons may suffer from Post-Traumatic Stress Disorder (PTSD)⁶¹ which occurs following the experiencing or witnessing of traumatic events that involve actual or threatened death, serious injury, or sexual violence or a threat to the physical integrity of self or others.⁶² Traumatic reactions occur when action is to no avail and intense fear, helplessness and horror are experienced.⁶³

A recent study evidenced symptoms suggestive of PTSD in a sample of women and girls who had been trafficked.⁶⁴ Indeed, a 2011 report by the National Board of Social Services in Denmark argued that Nigerian trafficking persons “often have a very high frequency of PTSD symptoms ... The related mental and psychosomatic symptoms ... [are] interpreted as a result of Juju [and] amplify the belief that supernatural forces have a tangible impact on victims’ lives.”⁶⁵ Emerging evidence collated from

⁵⁷ Korzinski, *supra* note 44.

⁵⁸ Zimmerman et al., *Stolen Smiles: The physical and psychological health consequences of women and adolescents trafficked in Europe (2006)*; Oram et al. (1), ‘Prevalence and Risk of Violence and Physical, mental and Sexual Health Problems Associated with Human Trafficking: Systematic Review’ *PLoS medicine* (2012) Vol. 9:5, pp.1-13; Oram et al (2), ‘Physical health symptoms reported by trafficked women receiving post-trafficking support in Moldova: prevalence, severity and associated factors’ *BMC Women’s Health* (2012), Vol. 12:20, pp.1-9; Rosenberg, R., *Trafficking of Adult Men in the Europe and Eurasia Region: Final report.* (July 2010, US AID) [online] Available at: www.lastradainternational.org/Isidocs/Trafficking%20of%20Men%20Draft_final.pdf [last accessed March 2013]; and Surtees, R., *Trafficking of men – a trend less considered: The case of Belarus and Ukraine – No 36*, (IOM, 2008) [online] Available at: www.publications.iom.int/bookstore/free/MRS_36.pdf [last accessed March 2013].

⁵⁹ Inflicted during torture or ritual abuse as in Juju cutting.

⁶⁰ Hossian et al., ‘The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women’ *Am J Public Health* (2010) Vol. 100:12, pp.2442-2449.

⁶¹ PTSD can be characterised by the following symptomatology: hyperarousal describes a state of constant alert where the response’s to unexpected stimuli are extreme and persistent; intrusion which causes victims to relive traumatic memories through vivid and spontaneous flashbacks and nightmares which can be triggered through insignificant reminders or trying to relay their experience to others; constriction entails the victim altering their state of consciousness in an attempt to manage unabating abuse and avoid recollection of traumatic memories leading to disassociation and numbness

⁶² American Psychiatric Association, *PTSD* [online]. Available at: www.psychiatry.org/ptsd [last accessed March 2013].

⁶³ Herman, *supra* note 40.

⁶⁴ Hossian, *supra* note 60.

⁶⁵ In Harrop, *supra* note 49, – translated - 7 MENNESKEHANDEL OG JUJU, RELIGIØS PRESSION OG KULTURMØDE I RELATION TIL NIGERIANSK OFRE FOR MENNESKEHANDEL [online]. Available at: www.shop.servicestyrelsen.dk/collections/udsatte/products/menneskehandel-og-juju-religiospression-og-kulturmode-i-relation-til-nigerianske-ofre-for-menneskehandel.

NGOs and health experts also suggest that persons trafficked for labour can also experience symptoms indicative of PTSD.⁶⁶

It is also important to note that practitioners, including the police, may develop vicarious or secondary traumatisation which can result from engaging with traumatised victims and hearing their traumatic experiences. This can result in detachment, disbelieving accounts and avoiding exploration of information.⁶⁷ Therefore it is equally important that practitioners are provided with regular checks.

Exposure to prolonged and repeated traumatic episodes may deeply impact upon the trafficked person's emotions, consciousness, self-perception, ability to make decisions and sexual behaviour. This was coined Complex Post-Traumatic Stress Syndrome (CPTSD), which can occur when a person is held in captivity and is under the control of their exploiter. In this context captivity is given a wide interpretation where the barriers preventing escape can be psychological rather than physical.⁶⁸ CPTSD can change the victims' perception of the perpetrator. This may result in the trafficked person emotionally identifying with their captor and forming a bond of attachment to them.

The conditions of Stockholm Syndrome and Traumatic Bonding may also explain why some trafficked persons do not accept assistance, appear as if they are not dissatisfied with the exploitative situation, or even return to their trafficker after their release. Traumatic Bonding theory is mostly used to describe why people who suffer domestic violence remain with their abusive partners. Some empirical research confirms however that Traumatic Bonding may be equally applicable to trafficking as there are many parallels with domestic abuse in terms of control mechanisms employed by the exploiter.

Conclusion

For the first time in 2012, the Government published data revealing that trafficking for all forms of forced labour exceeds the number for trafficking for sexual exploitation in the UK, and an increase in the number of identified trafficked men. Moreover, in 2012, the highest number of potential trafficked persons has been referred to the NRM since it began recording trafficking data in 2009.

Traffickers are constantly exploring new areas and industries where they can generate profit from the exploitation of others. Hence, understanding how the trafficking "enterprise" works and the impact of the crime on its victims is essential. Trafficked persons are subject to sophisticated methods of control used by their traffickers to subjugate them into complying with their demands. The mechanisms of control applied by the traffickers on their victims often leave long-lasting psychological and physical impacts. These make it more difficult for law enforcement and other CJS actors to identify and assist.

The report will discuss throughout the importance of developing a CJS response that takes into account the changes in traffickers' methods, the complexities of the crime and its impact on the victims' ability to participate in criminal proceedings.

⁶⁶ Oram (1) *supra* note 58.

⁶⁷ Lérias, D. & Byrne, M., 'Vicarious traumatization: symptoms and predictors' *Stress and Health* Vol. 19:3 (2003), pp.129–138; and Elwood, et al., 'Secondary trauma symptoms in clinicians: A critical review of the construct, specificity, and implications for trauma-focused treatment' *Clinical Psychology Review* Vol. 31 (2011), pp.25–36.

⁶⁸ Herman, *supra* note 40.

Chapter 2: UK Anti-Trafficking Legislation

The chapter outlines the current national legislative framework criminalising trafficking⁶⁹ and related exploitation such as slavery, servitude, forced and compulsory labour within England and Wales. The UK's legislation is rooted in the UN Palermo Protocol 2000 definition⁷⁰ which was reproduced in the Council of Europe Trafficking Convention (the Convention) and the EU Trafficking Directive 2011/36 (the Directive).

The chapter examines:

- Obligations to criminalise trafficking as set out in the Convention and Directive;
- The interpretation of the obligations by the UK in the Sexual Offences Act (SOA) 2003, and the Asylum and Immigration (Treatment of Claimants, etc.) Act (AI(TC)A) 2004;
- The additional offences of holding a person in slavery, servitude, forced or compulsory labour codified in the Coroners and Justice Act 2009;
- Arguments for consolidating these offences into one anti-trafficking act.

Convention and Directive obligations

Article 18 of the Convention and Article 2 of the Directive oblige States to establish offences that pertain to the trafficking definition which both derive historically from the UN Palermo Protocol 2000.⁷¹ These obligations extend to include offences of aiding and abetting, assistance and inciting;⁷² and all the offences must allow for liability of both natural and legal persons (companies).⁷³ These obligations do not require States to integrate the definition verbatim into domestic law. However, interpretation of the concepts should be in keeping with the principles of the Convention.⁷⁴ The Convention and Directive trafficking definition simplified constitutes three elements - *the act, means and purpose*:

“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons (*the act*), by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (*the means*), for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (*the purpose*)”.⁷⁵

For the purposes of the Convention, if the individual's exploitation has yet to occur but is intended and the act and means are present, trafficking has been ascertained and an offence has been committed.⁷⁶ In addition, Directive Article 2.3 expands the purposes to explicitly include the exploitation for criminal activities such as “*inter alia*, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain”. In addition, begging is to be understood as forced labour. The Directive's Recital,⁷⁷ though not binding on States, also includes “other behaviour such as illegal adoption or forced marriage [insofar] as they fulfil the constitutive elements of trafficking in human beings”.⁷⁸

⁶⁹ A slightly different legislative framework exists in Scotland and Northern Ireland which is discussed in Chapter 10.

⁷⁰ It was specifically enacted to implement the UK's commitment to the UN Palermo protocol and EU Framework Decision on Trafficking (Protecting the public, strengthening protection against sex offenders and reforming the law on sexual offences Cmd 5668 [online] Available at www.archive2.official-documents.co.uk/document/cm56/5668/5668.pdf [last accessed November 2012].

⁷¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime 2000.

⁷² *European Convention*, *supra* note 15, Article 21.

⁷³ *Ibid.*, *supra* note 15, Article 22.

⁷⁴ *Explanatory Report to the European Convention*, *supra* note 15, para.71.

⁷⁵ With the Convention the trafficking definition is found in Article 4.a and in the Directive it can be found in Article 2.1.

⁷⁶ *Explanatory Report to the European Convention*, *supra* note 15, para.87.

⁷⁷ Recitals are the part of the act which contains the statement of reasons for the act; they are placed between the citations and the enacting terms. The statement of reasons begins with the word ‘Whereas:’ and continues with numbered points comprising one or more complete sentences. It uses non-mandatory language and must not be capable of confusion with the enacting term.

⁷⁸ *The Recital to the EU Directive*, *supra* note 16, para.11.

The trafficking definition serves to encapsulate the full extent of the offending instead of separating it into its constituent offences, as the trafficking process can be disaggregated into many different offences including fraud, facilitating illegal migration, sexual or physical abuse, assault and blackmail. As such, national laws should attach significant penalties to trafficking, reflecting its seriousness and extent, and acknowledging that trafficking is an abuse of the trafficked person's human rights. In essence, legislation gives all States Parties the ability to define the phenomenon in its totality. Any resulting legislation should form the bedrock of anti-trafficking efforts and should be accessible as an effective tool to investigate and prosecute trafficking.

Furthermore, the Convention's *Explanatory Report* highlights the importance of a universal definition and its uniform application across States to reflect the sometime transnational nature of trafficking.⁷⁹ This provision also prevents countries that lack a strong anti-trafficking legislative framework becoming safe havens for traffickers.⁸⁰

Anti-trafficking legislation in England and Wales

The anti-trafficking legislation in England and Wales has been developed gradually, with several anti-trafficking laws introduced in stages in the past 12 years. The legislation differs slightly in Northern Ireland and Scotland (see Chapter 10). However, it is modelled on the offences discussed in this chapter.

Sexual Offences Act 2003 (SOA)

The SOA came into force on 1 May 2004 replacing the "stop gap measure" contained in s.145 of the Nationality, Immigration and Asylum Act 2002. Until May 2012, trafficking for sexual exploitation offences were located in ss.57-59 of the SOA, which anchors the concept of sexual exploitation within the UK's previously established sexual offences framework. Therefore, sexual exploitation covers some 50 offences such as rape, sexual assault, causing a person to engage in sexual activity without consent, soliciting, causing or inciting prostitution for gain and controlling prostitution.⁸¹

The Protection of Freedoms Act (PFA) 2012, enacted to bring UK trafficking laws into line with the provisions of Article 10 of the Directive, consolidated ss.57-59 into one section by inserting s.59A (1), (2), and (3) into the SOA, but did not alter the wording of the offence. The maximum sentence for these offences is 14 years' imprisonment. The actual wording of the offences is reproduced in Annex I but paraphrased as:

The SOA trafficking "act" is defined as the *intentional* arrangement or facilitation of: a person's arrival or entry into the UK; travel within the UK; or the departure out of the UK, where the defendant commits an intentional act against that person which amounts to a "relevant" offence stipulated in the SOA, which is committed after their arrival or entry into the UK (s.57), during or after the journey within the UK(s.58) or after their departure out of the UK (s.59).

If the defendant does not perpetrate the offence but believes that someone else is likely to, this also creates criminal liability under the SOA. Furthermore, the phrase "which if done will involve the commission of a relevant offence" can be interpreted as having an intention to commit the act, but it may not actually take place, therefore corresponding to the Convention's definition of trafficking where there is an intention to exploit.⁸² The relevant offence may be committed or intended to be committed in the UK or any other part in the world. PFA also extended the extraterritorial jurisdiction to UK

⁷⁹ *Explanatory Report to the European Convention*, *supra* note 15, para. 216.

⁸⁰ Gallagher, A, *The International Law of Human Trafficking* (2010), p.371.

⁸¹ Such relevant offences are further expanded through section 60(e) which states: anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.

⁸² *Explanatory Report to the European Convention*, *supra* note 15, para. 87.

nationals who commit trafficking offences anywhere in the world.⁸³ This also altered the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in the same way.⁸⁴

The UK has restricted its interpretation of the international trafficking definition by requiring only the establishment of the “act” and “purpose”, excluding the need for ascertaining the means element which operates to explicitly negate the supposed consent of the trafficked person to their exploitation. On the face of it, it may appear to ease the burden in establishing the offence by only requiring that two elements are evidenced. However, some of the relevant offences contained in Part One of the SOA such as rape, require that the trafficked person did not consent to the act, therefore the requirement of the means encroaches indirectly into the trafficking offence if rape is selected as the relevant offence.⁸⁵ However, it is common for both the prosecution and defence to draw on the trafficked person’s consent to their trafficking in such trials to substantiate their case. This was confirmed by the UK in the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)⁸⁶ report: “the British authorities have stated that all the means under the Convention are inherent in trafficking without being articulated in the legislation. By establishing how a trafficker exploits the vulnerability of a victim through force, threats or deception, this would also cover fraud, abuse of power, coercion or abduction, all of which are means acknowledged in case precedent”.⁸⁷ Unfortunately, as the concepts of deception or other forms of coercion do not appear in this offence’s equation, this may result in the misunderstanding of trafficking as a crime by CJS actors and a lay jury.

Many of the interviewed participants stated that the requirement for the intention to exploit being simultaneously and continuously present when facilitating or assisting travel, frustrates the usage of trafficking legislation. In effect, a chain of evidence demonstrating continuous intention which begins in the country of origin and ends with the transfer to the site of exploitation is needed. Such evidence is generally lacking, therefore making it difficult to prosecute under the legislation. One legal practitioner commented in relation to intentional acts in the context of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (discussed below) but equally applicable to the SOA:

“I have to say in cases I’ve prosecuted, I’ve looked at it and concluded it would be easier not to use that legislation ... first of all with s.4 you need to prove the intention to exploit on entry into the UK. Whereas if you break it down into its constituent parts ... you did enter illegally, you did help with facilitation and then this went on to happen. It’s easier to break it down into those parts than proving intention of coming into the UK as this can be a lot more difficult”.

Moreover, as discussed in Chapter 1, traffickers may structure and divide tasks in their networks to circumvent the legislation by ensuring different individuals arrange or facilitate travel to the end exploiter of the trafficked person. Without evidence to demonstrate a relationship between the arranger/facilitator in the source country and exploiter in the UK, the chain of evidence illustrating continuous intention is broken and necessitates CJS actors to utilise legislation which falls out of the trafficking framework.

Existing trafficking legislation is further confused by the fact that if there is an intention to assist or facilitate the “trafficked person’s” travel for the purposes of controlling, causing or inciting prostitution

⁸³ S.109 of the PFA.

⁸⁴ S.110 of the PFA.

⁸⁵ See evidential and conclusive presumptions about consent, ss.75 & 76 of the SOA. The offence of rape requires that the victim did not consent to the offences but this is limited to evidential presumptions that violence was used or was threatened against the victim before the offence took place, the victim has a disability, they were asleep, they were detained by the defendant or the defendant has administered a substance to the victim.

⁸⁶ GRETA is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. GRETA regularly publishes reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Convention will be required to step up their action.

⁸⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: First evaluation round* (Strasbourg, 12 September 2012), p.69.

for gain⁸⁸ this interpretation potentially captures both voluntary and involuntary prostitution. The difference being, as was held in *R v Drew*,⁸⁹ “the fact that the prostituted person might consent to control may affect sentencing but it did not affect guilt.”⁹⁰ *R v Delgado-Fernandez & Zammit; R v Thi*⁹¹ follows this position stating that in cases where elements of coercion, threats and force are present, this will bear on the final sentence as they are aggravating factors which should be considered by the judge whilst they deliberate the final sentence. In *Delgado-Fernandez & Zammit*, the defendants recruited women in Spain, South America and Eastern Europe to work as prostitutes in the UK. The women prior to their arrival knew that they would be working as prostitutes and received 40% of their total earnings, out of which they paid substantial expenses. Whilst the defendants were found guilty of trafficking, it was held that no intimidation, violence, deception or coercion was used.

This has potentially diluted the seriousness of trafficking whereby trafficking should pertain solely to those who are prima facie exploited. In theory such a wide interpretation should assist CJS actors in bringing prosecutions and sustaining successful convictions of traffickers under the SOA, as it can be used to sustain a victimless or evidence-based prosecution i.e. the trafficked person does not need to give evidence in the course of a trial. However, as there has been little increase in the number of successful prosecutions under this legislation it may have served to confuse both law enforcement and prosecutors as to where the parameters of trafficking lie. Respondents stated that in this situation CJS actors may be more comfortable in charging more established offences which they have experience in applying.

Asylum and Immigration (Treatment of Claimants, etc.) Act (AI(TC)A) 2004

S.4 of the AI(TC)A was developed to respond to exploitation that is non-sexual in nature, including organ trafficking; though theoretically this offence can also be applied to sex trafficking. Like the SOA, s.4 has also been slightly amended by way of the PFA. The maximum sentence for an offence under s.4 is also 14 years' imprisonment. Unlike the SOA, s.4(4) defines the concept of exploitation in four tiers. Firstly, exploitation covers behaviour that contravenes Article 4 of the European Convention on Human Rights, relating to slavery or servitude, and forced or compulsory labour (see the Coroners and Justice Act 2009 below).⁹² Secondly, encouraging, requiring or expecting a person to do anything which results in another person committing an offence under the Human Organs Transplants Act 1989 is also regarded as a trafficking offence.⁹³ Thirdly, labour trafficking is also interpreted to encompass a person who is subjected to force, threats or deception designed to induce him or her to provide services of any kind; or to provide another person with benefits or acquire benefits of any kind.⁹⁴ Fourthly, exploitation can also relate to specific and narrow instances of vulnerability deriving from mental or physical disability, youth or family relationship.⁹⁵

However, a lack of clarity exists among even the most specialised practitioners on the interpretation of force, threats, deception, and in particular vulnerability, as these concepts are yet to be contested as points of law in the courts. Recently the United Nations Office on Drugs and Crime (UNODC) has set out to clarify what may constitute “abuse of a position of vulnerability” and reflects that vulnerability can be due to internal factors such as mental health issues, but in some instances it can be engineered by traffickers or other external factors, outside of the trafficked person’s control, making them potentially more predisposed to trafficking than others.⁹⁶

⁸⁸ Ss.52, 53, 55 of the SOA.

⁸⁹ *R v Drew* at Southwark Crown Court, December 2006.

⁹⁰ Drew, S, *Human Trafficking – Human Rights: Law and Practice* (2009), p.103.

⁹¹ *R v Delgado-Fernandez & Zammit; R v Thi* [2007] EWCA Crim 762.

⁹² S.4 (4) (a) of the AI(TC)A.

⁹³ S.4 (4) (b) of the AI(TC)A.

⁹⁴ S.4 (4) (c) of the AI(TC)A.

⁹⁵ S.4 (4) (d) of the AI(TC)A.

⁹⁶ UNODC, *Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons* (April 2013) [online]. Available at: www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf [last accessed April 2013].

Like the SOA, the “act” element in s.4 is evidenced where a defendant arranges or facilitates, the arrival in, entry into, travel within, or departure out of the UK of a person, and (a) the defendant intends to exploit the other in the UK or elsewhere, or (b) the person believes that another person is likely to exploit the other in the UK or elsewhere (in the case of transfer into and within the UK) or elsewhere (in the case of transfer out of the UK). The requirement for movement is similar to the wording used in the SOA with the caveat that until May 2012 internal labour trafficking required a person to be firstly trafficked into the UK before they can be trafficked within. This was rectified by way of s.110 of the PFA.

It appears that previous legislation reflected a mistaken and perpetuated presumption that trafficking is an inbound immigration problem rather than a crime that originates and can be perpetrated within the UK and against UK nationals. This presumption has been reinforced by labour trafficking offences being placed within legislation concerned with immigration offences. Indeed s.4 is the only offence contained within the AI(TC)A which has a victim, the others solely criminalise persons. This has been shown to be erroneous through cases such as *R v James John Connors and Josie Connors*,⁹⁷ which demonstrates that British nationals are as vulnerable to forced labour as foreign migrants. Until the enactment of the Coroners and Justice Act 2009 (discussed below), the provisions found within s.4 created an “unnecessary extra hurdle to surmount”⁹⁸ for law enforcement and prosecutors to sustain a successful prosecution.

Therefore s.4 has been less appealing than utilising other offences to charge labour traffickers up until 2012 when this hurdle was rectified. The ATMG is aware of cases where the following situation materialised: the trafficked person arranged their travel to the UK and met a recruiter at the coach station, who took them to the company where they would subsequently be exploited. This has created potential past injustice for persons who did not fall within the protective ambit of s.4.

Internal trafficking

Inconsistent views of what constitutes internal trafficking as defined within the SOA and AI(TC)A emerged from the research. Participants gave a broad spectrum of answers as to what they considered to be the movement threshold to fulfil the “within” provision. For example, a law enforcement officer reported that some of their colleagues were unfamiliar with the concept of internal trafficking:

“Because of their [trafficking] knowledge the case was regarded as external trafficking, it was seen as a classic case as the victim was from a different country. I said “no, you can have internal trafficking too” but they still didn’t charge them with any trafficking offences, they charged them with rapes, etc. Well, the evidence for the rapes appears not to have materialised ... I didn’t find out until I came back on duty even though I’d said don’t forget the trafficking.”

Some participants stated that they interpreted the term “within” as crossing into another region of the UK; others asserted that it was into another town, while only a small group of experienced anti-trafficking professionals gave the correct interpretation - stating that it was *any* movement to a site of exploitation giving “within” its literal/plain meaning. In fact it can constitute movement to the next street if there was sound evidence to support this. Therefore travel from an airport or coach station, to a taxi ride to another premise where the trafficked person is exploited, can all constitute internal trafficking.

Another misconception was that internal trafficking related solely to British children who were moved within the UK; potentially this opinion derives from the recent media attention given to such cases.⁹⁹ However, a person of any nationality or age can be deemed to be trafficked internally if they are

⁹⁷ *R v Connors* at Luton Crown Court, 12 July 2012.

⁹⁸ *Drew*, *supra* note 90, p.145.

⁹⁹ Operation Span, Bullfinch etc. – see Chapter 8.

moved within the UK for exploitation. In sum, these misconceptions may, in part, be due to the CPS guidance remaining silent on the interpretation of the term “within”.

Trafficking as movement?

The UK’s interpretation of the Convention and the Directive’s definition is predisposed to tying trafficking to movement which is demonstrated by the use of the words arrival, entry, travel and departure. The focus on movement suggests that the period, some nine years ago, in which both the SOA and AI(TC)A were enacted, reflects the UK’s understanding of trafficking at that time. However, our understanding of trafficking has evolved and knowledge of the trafficking definition and this legislation has become more sophisticated.

Unfortunately the other *acts* contained in the international trafficking definition,¹⁰⁰ such as receiving or harbouring the trafficked person have been discounted. Including these in the UK’s trafficking legislation may have served, where evidence is lacking from other countries, to show the continual intention to exploit, from the facilitator or assister of movement to incorporate the final person in the network chain who ultimately exploits the trafficked person’s labour or services. The “harbouring and receipt of persons” in the Convention and Directive’s definition operates to bring not just the process (recruitment, transportation, transfer) but also the end situation or product of trafficking within the scope of the definition.¹⁰¹ These terms function to widen the reach of the definition to extend criminal liability to, “not just recruiters, brokers, and transporters but also owners and managers, supervisors, and controllers of any place of exploitation such as brothels, farms, factories, medical facilities, or households.”¹⁰²

The use of “harbouring or reception of persons” within domestic legislation is supported by the European Commission: “interpretations of the Trafficking Protocol that concentrate on the process of bringing a person into exploitation, rather than the final forced exploitation that they face, are in their nature flawed and limited. There is serious deficiency in the concept of trafficking if it focuses solely on the process of bringing another person into a situation of exploitation and does not address the use of forced labour or services ... where this has not been preceded by the other elements stipulated in the definition.”¹⁰³

The current trafficking definition can be said to contain a two-pronged test, firstly requiring movement which acts as a filter before the actual exploitation is determined; however, constructing the trafficking definition as such was not the intention of the drafters of the two European instruments. Moreover, there are concerns that this confusion may result in poor NRM referrals, where First Responders may focus their decisions too heavily on the aspect of movement and therefore this may equate to fewer referrals.

Coroners and Justice Act (CJA) 2009

S.71 of the CJA entered into force on 6 April 2010 and embeds into UK domestic law the provisions of Article 4 of the ECHR. It was introduced to reflect the occurrence of forced labour outside of the trafficking framework and bringing the UK in line with the *Siliadin v France* judgement,¹⁰⁴ where France was criticised for the lack of a criminal offence of forced labour and servitude. S.71 reads:

“(1) (a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

¹⁰⁰ The Palermo Protocol, European Convention and EU Directive.

¹⁰¹ *Gallagher*, *supra* note 80, p.30.

¹⁰² *Ibid.*

¹⁰³ European Commission, *Report of the Experts Group on Trafficking in Human Beings* (December 2004), p. 46.

¹⁰⁴ *Siliadin v France* App no 73316/01 (ECHR, 26 July 2005).

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.”

Article 4 contains a collection of different concepts with a clear graduation of severity: generally slavery is viewed as a particularly serious offence of human exploitation, followed by servitude and then forced/compulsory labour. The concepts should be viewed as fluid in which an exploitative situation may traverse from forced labour into servitude and vice versa.

Each of these sentences, in theory, is also punishable by a maximum sentence of 14 years' imprisonment. The CJA anchors Article 4 of the ECHR into domestic law, so that individuals can bring claims against other natural or legal persons under the Human Rights Act 1998. These provisions are to be interpreted in light of developing European Court of Human Rights (ECtHR) jurisprudence (e.g. *C.N v UK*¹⁰⁵ and *C.N. and V. v France*¹⁰⁶).

More importantly, the offence does not require movement to be evidenced before considering exploitative purpose, thus focusing attention on the treatment of the trafficked person rather than how they were brought into the UK. The CPS advise that if there is sufficient evidence to bring criminal proceedings under s.4 of the AI(TC)A, it should be charged in preference to s.71.¹⁰⁷

Despite the offence s.71 offering an effective solution to the deficiencies in the trafficking legislation, our research indicates low levels of awareness, of the existence of the offences, or where the practitioner had prior knowledge of s.71, they had not considered the potential benefits of applying it to their cases. Furthermore, participants stated that these offences were not appropriate to trafficking for sexual exploitation cases; however, one experienced police force was attempting to use s.71 in a sexual exploitation case where there was no evidence of movement.

Slavery

The concepts of slavery, servitude and forced or compulsory labour are also contained in the Convention and Directive as one of the purposes of exploitation, as well as reproduced in s.71. However, little is known about the slavery definition as no cases under this offence have been brought in either the ECtHR or domestic courts. This may be due in part to the contended theoretical debate on whether slavery can exist in contemporary law and context.

The definition of slavery as it stands in Article 4 of ECHR derives from the 1926 Slavery Convention, which reads “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” In *Siliadin v France*. the ECtHR stated that slavery is the exercise of “genuine right of legal ownership” which conflicts with the internationally agreed definition of slavery. Thus the ECtHR, by the use of the word “genuine”, restricts its interpretation to *de jure* (legalised slavery), meaning that as slavery is outlawed in legislation it no longer exists.

A progressive interpretation of the 1926 Slavery definition can be found in Australian jurisprudence, namely *R v Tang*,¹⁰⁸ involving debt bondage to the sum of \$45,000 (\$20,000 pertained to the

¹⁰⁵ *C.N. v UK* App no 4239/08 (ECHR, November 2012).

¹⁰⁶ *C.N. and V. v France* App no 67724/09 (ECHR, 11 October 2012).

¹⁰⁷ CPS, *Legal Guidance: Slavery, Servitude and Forced or Compulsory Labour* [online]. Available at: www.cps.gov.uk/legal/s_to_u/slavery_servitude_and_forced_or_compulsory_labour/ [last accessed December 2012].

¹⁰⁸ *R v Tang* (2008) 237 CLR 1. The case involved five Thai women, previously prostitutes, who travelled to Australia in full knowledge that they would work in a brothel. The women spoke no English, had no concept of their living conditions and did not know anyone in Australia, possessed little or no money, had their travel documents and return tickets confiscated, and were told to hide if immigration officials arrived at the premises. Each of the women was indebted to Tang to the tune of \$45,000 (\$20,000 pertained to the purchase price of each woman, in addition to airfare and living expenses) which they did not know how this figure was calculated. The women were expected to work for six days of the week at \$50 per client which would be retained by Tang to repay their debt. The seventh day was a 'free' day in which they could choose to work and keep their wages. When the women came to the attention of the

purchase price of each trafficked woman, in addition to airfare and living expenses). The court affirmed that “powers attaching to the right of ownership” covers a de facto condition of slavery.¹⁰⁹

Adding weight to the above arguments in the UK context derive from the *R v SK*¹¹⁰ judgment (see Chapter 7) where their Lordships noted: “To dismiss “slavery” as being merely reminiscent of an era remote from contemporary life in the United Kingdom is wrong. In the modern world exploitation can and does take place.”¹¹¹ The recently published Bellagio–Harvard Guidelines on the Legal Parameters of Slavery sought to develop legal clarity on the interpretation of slavery, contextualising slavery in the modern day and acting as a reference point for CJS practitioners.¹¹²

Servitude

The definition of servitude was affirmed in *Siliadin v France*, stating that this “in addition to the obligation to perform certain services for others ... the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition”.¹¹³ In *Siliadin* servitude was viewed as an aggravated form of forced and compulsory labour. Servitude has been prosecuted successfully in the UK: see *R v Rebecca Balira* in 2011,¹¹⁴ *R v Josie and James Connors*¹¹⁵ in 2012 and recently in *R v Dawid Siwak* 2013.¹¹⁶

R v Rebecca Balira

The defendant, a leading HIV scientist, brought her victim to the UK from Tanzania. On arrival in the UK, the defendant removed and withheld the victim’s passport and prohibited contact with her family in Tanzania. The victim was made to work 18 hours a day for seven days per week without pay, in which she looked after the defendant’s three children and performed household duties. In these seven months of exploitation, the defendant assaulted the victim with her fists, shoes and a wooden spoon. In one instance the victim’s bra was cut off with a pair of scissors after the defendant accused her of taking money from a moneybox. The victim was only able to escape when she confided in her friend about her mistreatment. Her friend sought help from Kalayaan, which represents migrant domestic workers, and she was assisted in reporting the abuse to the police.

Most recently, in *C.N. and V. v France*¹¹⁷ the ECtHR further clarified the law by stating that the essential feature distinguishing servitude from forced or compulsory labour was the victims’ feeling that their condition could not be altered and that there was no potential for change, in particular C.N.’s belief that she could not escape from Mr and Mrs M’s guardianship without finding herself in an illegal situation, and her understanding that, without vocational training, she would be unable to find external employment.¹¹⁸ The court also distinguished housework contributions for mutual family assistance or cohabitation from an Article 4 violation by examining proportionality, in particular the nature and volume of work demanded. It is important to note that this offence does not require physical abuse as the focus is on freedom and choice rather than ill treatment, though this may also be present.¹¹⁹

authorities, two of the women had paid their debt off and were now working for Tang on their own terms and in possession of their travel document and return tickets. However, it was concluded that in the totality of the circumstances, ‘the complainants were effectively restricted to the premises’.

¹⁰⁹ *Ibid.*, para. 25 (Gleeson CJ).

¹¹⁰ *R v SK* [2011] EWCA Crim 1691.

¹¹¹ *Ibid.*, para. 41.

¹¹² Research Network on the Legal Parameters of Slavery, *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* (3 March 2012) Available at: www.qub.ac.uk/schools/SchoolofLaw/Research/researchfilestore/Filetoupload,286201,en.pdf [last accessed 14 April 2013].

¹¹³ *Siliadin*, supra note 104, para. 123.

¹¹⁴ *R v Balira* at Southwark Crown Court, August 2011.

¹¹⁵ *Connors*, supra note 50.

¹¹⁶ *R v Siwak* at Portsmouth Crown Court, February 2013.

¹¹⁷ *C.N. and V. v France*, supra note 106.

¹¹⁸ *Ibid.*, para. 90-94.

¹¹⁹ *Ibid.*, para. 75.

Forced or compulsory labour

The definition of forced or compulsory labour, as reproduced in Article 4 of the ECHR is to be intentionally read with the International Labour Organization (ILO) convention concerning Forced or Compulsory Labour (No.29), which defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Forced labour may also be distinguished from labour exploitation by looking at the ability of the worker to exit the situation, which the ILO describes as the ability to “revoke a labour agreement without losing any rights or privileges, including in this, the right to promised wages”.¹²⁰ If the worker cannot exit their situation, without losing owed wages or being denounced to the authorities, this would be considered forced labour. If the worker is free to leave without the loss of wages or other privileges, this is not classed as forced labour.¹²¹

Both the CPS Guidance¹²² and the Ministry of Justice Circular,¹²³ which accompanied the new offences states that the s.71 offence requires an element of *coercion* or *deception*. Though the Guidance and Circular go on to replicate the list of non-exhaustive indicators these concepts are not fleshed out and therefore are not adequately understood. Indeed in *R v John and Josie Connors* the CPS guidance, which includes ILO indicators,¹²⁴ was said to have no legal standing and therefore the evidence collated against these indicators was deemed not material to the case. Instead the court looked to relevant ECtHR jurisprudence for guidance.

Application of definitions in practice

The research established that erroneous interpretation of the constituent elements of the trafficking definition and UK anti-trafficking laws (particularly servitude and forced labour) by some CJS actors has hampered the identification of trafficked persons (see Chapters 4 and 5). Such misinterpretations were found to inhibit the ability of the police to address trafficking. Most concerning, examples were presented to the ATMG relating to a misunderstood definition in terms of a trafficked person’s consent. The international binding definition is clear that any initial consent of a person is void if s/he is a victim of trafficking. The ATMG was presented with cases where the trafficked person agreed to travel to the UK, not knowing about the real purpose of their trip. Their initial consent was perceived as complicity in their exploitation, despite the established deception, use of threats and long working hours for little or no recompense once in the UK. An incorrect view seems to persist that a trafficked person needs to be abducted or forced to come to the UK against their will.

Furthermore, when the trafficking network chain is protracted and complex, it was reported that the police have difficulties in applying the definition and establishing where liability should fall. These complex networks - from arranger to exploiter - which often include several intermediaries will inevitably be difficult for trafficked persons to understand including holding the belief that some of them acted, or are still acting, in their best interests. Therefore it may be difficult or impossible for trafficked persons to provide a coherent account of the chain, which can be exacerbated by the psychological impact of their experiences.¹²⁵ In addition, service providers reported confusion for the police when identifying trafficking where the exploiter was the trafficked person’s partner or a family member.

¹²⁰ Andrees, B. *Forced labour and trafficking in Europe: how people are trapped in, live through and come out* (ILO, 2008) p. 2. Available at: www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090548.pdf [last accessed 12 March 2012].

¹²¹ *Ibid.*, p. 7.

¹²² CPS legal guidance, *supra* note 107.

¹²³ Ministry of Justice, *Circular 2010/07 Slavery, servitude and forced or compulsory labour: Implementation of section 71 of the Coroners and Justice Act 2009* (Criminal Law Policy Unit, 19 March 2010). Available at: www.library.npia.police.uk/docs/moj/circular-2010-07-coroners-justice-act-s71.pdf [last accessed 15 May 2013].

¹²⁴ ILO, *ILO indicators of Forced Labour* (1 October 2012). Available at: www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/lang--en/index.htm [last accessed 14 March 2013]

¹²⁵ Herlily et al, ‘Asylum claims and memory of trauma: sharing our knowledge’ *The British Journal of Psychiatry* Vol.191: 3-4 (2007).

Another issue discussed was the perceived degree/threshold of exploitation required to meet the trafficking, servitude and forced labour definitions. For example, in reported domestic servitude cases, law enforcement officers mistakenly understood situations where “free” accommodation or education were exchanged for the trafficked person’s domestic work, were considered outside of the ambit of the definitions, despite physical abuse and obligation to work long hours around school time. Here it is important to note the case of *C.N. and V. v France*, in particular arguments around proportionality and carrying out household chores.¹²⁶

The case for a comprehensive anti-trafficking law

The Government contends that “[w]hilst introducing a new human trafficking bill to consolidate existing legislation into one Act would be administratively neater, the UK Government does not consider it necessary or proportionate to effectively bring to justice those who seek to exploit others.”¹²⁷

Conversely, the majority of interviewed participants (90%) stated that a unified piece of legislation would give the Government opportunity to address some of the flaws outlined above and bring legislation into line with the Convention and Directive. Furthermore, they suggested that a clear trafficking definition in a single Act would eliminate the discrepancies between UK statute and international law and, in particular, would greatly assist law enforcement.

While there is unquestionable excellent practice among some CJS actors, research by the ATMG indicates the more common levels of response to trafficking are considerably short of good practice. One of the main problems is that current trafficking offences lack prominence in the legislation they are housed. Therefore a law enforcement officer or a legal practitioner with no prior experience or unclear understanding of trafficking may have difficulty in locating these offences.

One law enforcement officer stated that as trafficking for sexual exploitation has sexual elements practitioners would instinctively look to the SOA where they would find the relevant sections. However, the same cannot be said in relation to the AI(TC)A and CJA whose subject titles do not reflect the nature of the offence and therefore are much harder to discover. Furthermore, the labour trafficking offence is included within immigration law, legislation with which criminal law practitioners are less familiar.

Interviewed participants stated that placing the relevant legislation side-by-side would focus the mind and force considered thought when applying the facts to which offence would be the most appropriate instead of trying to squeeze the evidence into one where another may be a better fit. Furthermore, if all pieces of legislation were in one place this would also assist in cases where trafficked persons are exploited for multiple purposes. A support provider stated that in one of their cases the law enforcement officers could not comprehend that a trafficked person could be simultaneously exploited in different ways. Therefore, a consolidated act would enable law enforcement to better recognise that they could charge for a number of offences.

Several interviewers cited an example where the Forced Marriage (Civil Protection) Act 2007 was introduced to combine the forced marriage offence and protections. A period of six months was allocated to raise awareness among the general public with the specific messaging that it is an offence and that the UK took a strong stance against this practice. A similar approach could be adopted with respect to trafficking in the UK taking strong leadership that it stands robustly against trafficking. In both Scotland and Northern Ireland legislative initiatives have already commenced to introduce comprehensive laws within their jurisdictions (see Chapter 10).

¹²⁶ *C.N. and V. v France*, *supra* note 106.

¹²⁷ Home Office, *Report on the Internal Review of Human Trafficking Legislation* (May 2012) [Online]. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/97846/human-trafficking-legislation.pdf [last accessed 13 December 2012].

Conclusion

As a consequence of the separate introduction of individual offences in the statute books, the UK lacks one clear trafficking definition in law.¹²⁸ The ATMG found this to be problematic in the practical application of the law by CJS actors. It concludes that individual trafficking offences remain underutilised due to low awareness, misunderstanding or perceived evidential difficulties. This seems to contradict the Government's view that "[t]he human trafficking legislation we already have in place in England and Wales is effective, and supports and complements other legislation used to convict perpetrators of similar serious offences."¹²⁹ Furthermore, the current legislation does not articulate the protection of the rights of trafficked persons as required by the Convention.

The ATMG concludes that a unified piece of legislation is needed to bring the UK fully in line with the Convention and the Directive. A single Act would have the combined benefit of raising awareness of trafficking offences and simplifying their prosecution in practice. The Forced Marriage (Civil Protection) Act 2007 was introduced to do just that. The ATMG recommends that a similar approach be adopted with respect to trafficking like its counterparts in Scotland and Northern Ireland which have already taken steps to consider enacting a single anti-trafficking law.

Recommendations

- **Promote the use of trafficking offences as the principal offence in all cases relating to trafficking.**
- **Clarify what trafficking "within" the UK constitutes to aid CJS actors' understanding of internal trafficking.**
- **Enact a single Act covering revised human trafficking and other forms of contemporary slavery offences and victim protections (including a non-criminalisation provision).**

¹²⁸ A single law definition is recommended by international legislation.

¹²⁹ *Internal Review, supra note 127.*

Chapter 3: Statistics on trafficking offences

This chapter examines prosecution and conviction statistics under trafficking and forced labour offences and discusses the use of other offences to prosecute traffickers. It will look at the two data sets used by the Government to track trafficking cases through the courts.

Trafficking prosecutions and other offences in numbers

Statistics currently collated on the CJS's response to trafficking are confusing and potentially misleading, as two departments gather different statistics on trafficking prosecutions and convictions: a) the Ministry of Justice (MoJ) collects data on convictions and prosecution of trafficking where the trafficking offence charged is the principal offence¹³⁰ on the indictment; and b) the Crown Prosecution Service (CPS) collects data from their case management system where cases with a trafficking offence charged are flagged even if other offences are later convicted. It is currently very difficult to document, on the basis of this data, the ability of the CJS to prosecute traffickers in an appropriate and effective way.

MoJ Data

Prosecution and conviction rates for trafficking for sexual exploitation over the past five years can be found in the table below.¹³¹ The prosecution statistics are presented in the Government's *Internal Review of Human Trafficking Legislation*¹³² and the *First annual report of the Inter-Departmental Ministerial Group on Human Trafficking*.¹³³ Note that 2007 - 2008 are years before the Convention was implemented and the NRM introduced in the UK.

| Year | Prosecutions for trafficking for sexual exploitation | Convictions for trafficking for sexual exploitation | Success rate in percentages |
|------|--|---|-----------------------------|
| 2007 | 87 | 15 ¹³⁴ | 17% |
| 2008 | 114 | 24 ¹³⁵ | 21% |
| 2009 | 102 | 23 | 22% |
| 2010 | 96 | 10 | 10% |
| 2011 | 113 | 8 | 7% |

It is important to note that the trafficking prosecutions column refers to when the defendant first appeared in front of a magistrate to determine bail and mode of trial. Convictions are recorded when the jury return their verdict at court. Therefore conviction statistics appear with a delay, as it may be a year or more between the arrest/charge and final prosecution. Also, the trafficking case may involve one or more defendants.

The above table indicates that, under MoJ statistics, the annual number of prosecutions under the SOA's trafficking offences remains stable, close to the mean number of 102, despite major developments in the past five years including: specially funded nationwide law enforcement operations on trafficking (see Chapter 5); the establishment of the UKHTC (see Chapter 6) in 2006 and its move into Serious Organised Crime Agency (SOCA) in 2010, the establishment of specialised Anti-Trafficking Unit in the Metropolitan Police Service (MPS) in 2007 and its merger into the Trafficking and Prostitution Unit (SCO9); the entry into force of the Convention and the introduction of the NRM in 2009, with a steady rise in the numbers of people recognised as trafficked persons. More

¹³⁰ The principal offence in this context means that the trafficking offence has the heaviest potential sentence (14 years) out of the offences charge on the indictment.

¹³¹ Pre-2009 conviction statistics are taken from Freedom of Information Request and Parliamentary Questions in Hansard

¹³² *Internal review, supra* note 127.

¹³³ *Ibid.*

¹³⁴ Crispin Blunt, HC Deb, 28 February 2011, c8W.

¹³⁵ *Ibid.*

concerningly, the number of convictions has gradually declined between 2009 and 2011, as shown in the second column. This may be for a number of reasons which will be discussed throughout the report.

The figures combined for s.4 of the AI(TC)A and s.71 of the CJA are significantly lower than that of sexual exploitation as evidenced in the table below:

| Year | Prosecutions under AI(TC)A & CJA | Convictions under AI(TC)A & CJA | Success rate |
|------|----------------------------------|---------------------------------|--------------|
| 2007 | 3 | 1 ¹³⁶ | 33.3% |
| 2008 | 10 | 4 ¹³⁷ | 40% |
| 2009 | 20 | 2 | 10% |
| 2010 | 21 | 6 | 28% |
| 2011 | 52 (37 & 15) | 0 | 0% |

Though the number of prosecutions has increased, occasionally doubling in quantity, convictions are severely lacking. 2011 (pursuant to the introduction of the CJA) saw the most prosecutions since 2007 but no convictions. However, there is a caveat as the system of data recording would seem to be unreliable. For example, the conviction of Rebecca Balira under s.71 of the CJA in August 2011 (the first conviction under s.71) was not recorded by the MoJ and did not feature with the *Internal Review* or the Inter-Departmental Ministerial Group report, despite s.71 being the principal offence in the case. This indicates that the MoJ data recording system lacks accuracy and is not a robust method of analysing whether the CJS's response to trafficking is effective.

CPS's case management system data

Since 2010, the CPS has placed a flag on cases where a trafficking offence is charged among other offences. This enables the tracking of cases that have been brought using a trafficking offence, even if the final conviction is for other offence/s.¹³⁸

The CPS case management system indicates that general conviction rates for traffickers from flagged prosecutions are higher than the MoJ statistics. This data combines both sexual and non-sexual trafficking. In 2010, out of 103 cases which included trafficking charges and a combination of other offences, 73 resulted in a conviction (70.9% success rate);¹³⁹ in 2011, 94 out of 142 prosecutions resulted in a conviction (66.2% success rate);¹⁴⁰ and in 2012, 78 cases out of 111 resulted in a conviction (70.3% success rate).¹⁴¹ However, information on the specific offences for which these traffickers were convicted is omitted, as the statistics are not publically disaggregated.

Taking the year 2010 for instance, 70 of the cases may have resulted in the traffickers being convicted of prostitution-related offences, with 16 convicted under trafficking offences, 10 assaults and 7 rapes. Conversely, there could be 70 rapes and 16 trafficking offences and 17 prostitution-related offences. A breakdown of the information has not been made public, making it difficult to analyse the effectiveness of this approach and to assess whether traffickers are receiving proportionate sentences.

¹³⁶ Damian Green, HC Deb 3 November 2010, c861W.

¹³⁷ *Ibid.*

¹³⁸ The other offences charged alongside trafficking vary considerably and may constitute: obstructing a police officer, common assault, harassment without violence, offensive weapons, assault, prohibited weapons such as firearms, possession of articles for the use of fraud, theft, controlling prostitution, keeping a brothel used for prostitution, and causing and inciting prostitution for gain, threats to kill, making or supplying articles for the use of frauds, possession of a false identity documents with improper intent, cruelty to young persons under 16, fraud, money laundering, conspiracy to traffick, assisting unlawful immigration to a member state, entering the UK in breach of deportation order, blackmail, rape, kidnap and false imprisonment.

¹³⁹ Oliver Heald, HC Deb, 4 February 2013, c62W.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

Similar confusion over conviction rates had been presented for rape. In The Stern Review,¹⁴² it was purported that 58% of rape cases are convicted of an offence of some sort. Academics such as Cook believe that the distinction between rape and lesser sexual offences is important in that a victim who reports rape and achieves a conviction for sexual assault (averaging 27.5 months imprisonment) may experience this in a negative way, in that it may add to the victim's sense of injustice.¹⁴³ This view may also be held by trafficked persons. Furthermore, neither data set include conspiracy to traffick nor trafficking cases where trafficking offences were not charged at all. Data on conspiracy to traffick appears to have been collated pre-2009¹⁴⁴ but a Parliamentary Question stated that the CPS was unable to provide data as the CPS cannot disaggregate from figures for all offences of conspiracy as it would be too costly to do so.¹⁴⁵

Prosecuting trafficking under other offences

Some CJS actors believe it sufficient if a trafficker is convicted under any offence. One respondent argued, "*at the end of the day as long as they have been convicted, disrupted, that they are serving custodial sentences and assets have been stripped, what does it matter, under what offence?*" It was also stated that given the limited police and CPS resources, concessions had to be made. Hence, charging related offences that do not require costly international assistance or investigative techniques to prove trafficking, can be a more viable option if still attaining a potentially appropriate sentence. This view may be driven by the fact that the CJS does not act for victims but acts on behalf of the public and the Crown.

Other respondents presented a different position, highlighting that prosecuting under trafficking offences is significant for a number of reasons. Firstly, convicting traffickers under specific trafficking legislation is important to document the extent of the problem and to demonstrate the UK's success in combating it. A decrease in trafficking prosecutions and convictions may falsely indicate a decrease in the problem, impacting on resources dedicated to combat it.

Secondly, trafficking is a serious offence and a conviction for a lesser offence may not be commensurate with the gravity of the crime committed. The Convention and Directive are constructed in the basis that significant convictions have a deterrent effect to other possible offenders. Also, parliament has deemed trafficking a serious offence that attracts a maximum sentence of 14 years' imprisonment. If a trafficker is convicted under controlling prostitution, for example, this incurs a maximum sentence of only seven years reducing the maximum sentence the judge would have at their disposal if convicted of trafficking.

In the UK, where the sentence is 12 months or more, but less than four years, the convicted person serves half their sentence in prison, and then may be eligible to an automatic conditional release. Sentences of four years or more (excluding life) are subject to discretionary conditional release (DCR), which means that the prisoner becomes eligible for release at the half way stage. Therefore a trafficker may receive a relatively short prison sentence which does not reflect the full extent and severity of the offending as envisaged by Parliament.

For example, in *R v Sochack, Bryll, Wegrzynowski, and Kukielka*,¹⁴⁶ the principle offender, Sochack, was convicted under conspiring to manage or assist in the management of a brothel and was sentenced to three years and made to pay a nominal confiscation order of £1.¹⁴⁷ This case concerned

¹⁴² Government Equalities Office, *The Stern Review: An independent review into how rape complaints are handled by public authorities in England and Wales* (Home Office: 2010) [online]. Available at: http://beneaththewig.com/wp-content/uploads/2011/08/Stern_Review_acc_FINAL4.pdf [last accessed December 2013].

¹⁴³ Cook, K. 'Rape Investigation and prosecution: stuck in the mud?' *Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice*. Vol. 17:3 (2011) pp. 250-262.

¹⁴⁴ *Wrong Kind of Victim*, *supra* note 13, p. 86.

¹⁴⁵ The Solicitor General, Hansard Deb, 17 Oct 2012, c320W.

¹⁴⁶ *R v Sochack, Bryll, Wegrzynowski, Kukielka* at Ipswich Crown Court, September 2012.

women who were recruited in Poland to work as prostitutes in the UK; however, when the women came to the UK they were collected and taken to a location unknown to them. They had no choice on which clients they saw, were only allowed to retain a heavily deducted amount of what they earned, and threats were made to force them to work under these terms. In contrast, *R v Roci and Ismailaj* is similar in facts to *R v Sochack and others* but trafficking legislation was utilised and the main offender was sentenced to nine years' imprisonment (also see Chapter 7). Leading on from this, one legal practitioner stated with regard to sentencing for offences that are not trafficking:

"We got the conviction [for facilitation of illegal entry] but the question then is how is the judge to sentence? Is he to sentence on the basis of what he thinks is the real motivation behind it or is he to sentence simply on the basis of an immigration offence? ... [On] appeal they thought the judge was entitled to take his own view of the facts but it was still in some ways unsatisfactory when you come to sentencing".

Thirdly, seeing the trafficker being brought to justice affects the trafficked person's recovery and ensures that their right to effective remedy is upheld. Trafficked persons supported by several of the interview stakeholders have seen their traffickers charged with prostitution-related offences and receive 18-month sentences. This meant that most of the prison term had been served on remand whilst awaiting trial. A law enforcement officer interviewed stated:

"[I]f I could [prosecute] somebody for pimping and not necessarily have to use a victim of trafficking but still get that information in [as an aggravating feature in sentencing], why put that victim through that?... I know that trafficking carried 14 years and pimping carries 7 but there are very few traffickers getting 14 years. But, they are getting towards the upper end for pimping."

However, given the analysis of the cases found in Annex II, there are no clear patterns to suggest that this is the case as there are many variables to take into consideration such as guilty pleas, and the individual judge adjudicating. This approach has also serious implications on the trafficked person's ability to obtain compensation as these offences do not require a trafficked person's participation in the trial and therefore there is no victim to make a compensation order for. More importantly, when the sentences for trafficking and prostitution-related offences average the same, the question which should be asked is: Is this an effective criminal justice response to trafficking given the enhanced seriousness that trafficking should have?

*R v Carroll*¹⁴⁸ illustrates that a nuanced approach should be given to interpreting the effectiveness of cases. It concerned the trafficking of African women for sexual exploitation who were subject to Jujū rituals (see Chapter 1). Originally charged with trafficking, Thomas Carroll was sentenced to five years' imprisonment after a plea bargain was reached for conspiracy to control prostitution and conspiracy to launder money. In the Serious Organised Crime Agency's press release on the conviction it was stated: "we accepted the guilty pleas on the basis that the judge would deal with the trafficking aspect [coercion as an aggravating factor] of the case under the conspiracy to control prostitution. This meant that vulnerable women would not need to give evidence in court and relive their sexual exploitation by this family, yet still left the judge with adequate sentencing powers."¹⁴⁹

Although it could not be ascertained in this case, law enforcement officers stated that to avoid extensive cost of a trial, plea bargaining was a common CPS practice. In *R v Carroll*, the police were able to obtain a confiscation order under the Proceeds of Crime Act (POCA) 2002 to the sum of £1.9

¹⁴⁷ There is no minimum amount for triggering a confiscation investigation. A nominal confiscation order is used in cases where a minimal amount of assets has been identified. The nominal confiscation order could be for as little as £1 as there is no lower limit. This means that the case can be revisited at any time in the future should the offender acquire wealth.

¹⁴⁸ *R v Carroll* at Cardiff Crown Court, February 2010.

¹⁴⁹ SOCA, *12 years for family-run prostitution and trafficking ring* [online]. 4th February 2010. Available at: www.ruhama.ie/page.php?intPageID=233.

million.¹⁵⁰ As the defendant failed to comply with the order, an additional ten years was imposed on his sentence, pursuant to s.35 (2) of POCA.¹⁵¹ This may be seen as a success as he was deprived of his liberty and money accumulated from trafficking; however, in this case, not all members of this loosely organised trafficking network were apprehended including the Nigerian recruiters who facilitated the entry into the UK and to whom the trafficked persons were indebted, thus possibly continuing the recruitment of new victims (see Chapter 5 – Investigating trafficking).

It was also stated by law enforcement that the imposing of an additional ten years is a rare occurrence and in practice such measures may only be imposed where the assets are more than £1 million. Under £1 million in recoverable assets is more likely to result in an additional two years. Furthermore, law enforcement participants stated that certain criminal groups are very adept at hiding their assets.

Conclusion

The current dual system of data collection on prosecutions and convictions of traffickers gives an inaccurate and potentially misleading picture on how successful the UK is in tackling trafficking. The result is a situation where different statistics are presented by different departments, leading to an uncertainty over the number of perpetrators actually brought to justice for trafficking. Furthermore, conviction statistics are not disaggregated, rendering it difficult to ascertain how many child traffickers are prosecuted.

Recommendations

- **Create a unified data collection system that includes all prosecutions and convictions of traffickers, regardless of the final offence charged. Also, disaggregate data by age and gender.**
- **Publish disaggregation of CPS flagged data for a more transparent analysis of the offences traffickers are convicted under.**

¹⁵⁰ Lifestyle offences specified in Schedule 2 are: drug trafficking; money laundering offence; directing terrorism; people trafficking; arms trafficking; counterfeiting; intellectual property; pimps and brothels; blackmail; an offence of attempting, conspiring, inciting, aiding, abetting, counselling or procuring an offence. *S.71 offences are not lifestyle offences.*

¹⁵¹ BBC News, 'Thomas Carroll's sentence is extended over prostitution fund'. 27 April 2012. Available at: www.bbc.co.uk/news/uk-wales-south-west-wales-17876691 [last accessed March 2013].

Chapter 4: Identifying trafficking on the frontline

Correct and timely identification of trafficked persons is essential for a successful criminal justice response to trafficking. When trafficked persons are not recognised, the crime goes unidentified and traffickers enjoy impunity while trafficked persons' access to justice is denied. Opportunities to preserve evidence or detain perpetrators in the "golden hour"¹⁵² may also be lost if trafficked persons are not quickly identified at the scene. This chapter will outline primarily the role of the police in trafficked person's identification and the need to understand the complexities of trafficking and the impact it has on its victims.

Specifically, the chapter will focus on:

- The UK's obligations with respect to identification and an analysis of the practical implementation of these provisions;
- Perceptions and misconceptions about trafficking that may hinder identification;
- Frontline police training.

Convention and Directive obligations

Article 10 of the Convention states "Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims". The *Explanatory Report* to the Convention deems public authorities most likely to come into contact with trafficked victims, such as the police, as the "competent authorities".¹⁵³ While law enforcement are most likely to encounter trafficked persons, the evidence gathered in the research raised concerns about the police's ability to detect and identify trafficking, as one service provider stated:

"[The police] don't know what human trafficking is, don't understand what it is and don't recognise it at all ... we can quote countless examples of [trafficked persons] ... when they [attend a police station] on their own, in the first instance attended a police station, being told to go away and seek redress through a Citizens' Advice Bureau, or a civil solicitor."

Identification at police stations

Front desk staff are often the first to meet potential trafficked persons if they present at a local police station. In essence they are the gatekeepers to both the referral of the trafficked person to assistance and of the potential investigation. The ATMG heard of cases across the UK where trafficked persons were misidentified as civil claimants by police reception staff or refused assistance altogether. Also service providers reported a tendency to view the person as an illegal migrant first and that these allegations are made as an attempt to stay in the UK. Some of these cases resulted in detention whilst attempting to report trafficking. These were not isolated incidents, indicating a nationwide problem requiring urgent attention.

In a recent case, a service provider supporting four Hungarian men who had been trafficked for labour attempted to obtain out-of-hours police assistance with them at four different London police stations. In all of the stations they were met with indifference and reluctance to take statements. Officers stated

¹⁵² The Golden Hour principle describes effective early action can result in securing significant material that would otherwise be lost to the investigation. Where the police are informed of an incident shortly after it has occurred, offenders may still be in the area. Locating them can provide forensic opportunities that could otherwise be lost, the testimony of witnesses can also be obtained while the offence is still fresh in their mind, CCTV images and other data can be collected before it is deleted and action can be taken to secure scenes before they become contaminated.

¹⁵³ *Explanatory Report to the European Convention*, supra note 15, para. 129.

that their problem was a civil matter and not a police concern. It was only after an intervention by the Metropolitan Police Service Trafficking and Prostitution Unit (SCO9) that the complaints were handled appropriately.

In another case presented by a legal representative, a south Asian trafficked person attempted to report labour trafficking to the police, wishing to give details of the trafficker whom he claimed was exploiting others. He attended a police station in Manchester and another in Leeds. In both instances, he was refused assistance and advised that it was an immigration matter and thus should be dealt with by the Home Office.

These situations may arise because trafficked persons, as one law enforcement officer stated, will not say “*the golden words: ‘I’m a victim of human trafficking!’*” Victims may approach the police to report that their employer withholds their passport and wages or because they wish to return home. These may seem to be civil matters, however, they are also indicators of trafficking and/or forced labour and should therefore prompt further inquiries. However, even if officers are not familiar with trafficking indicators, they should be able to identify other crimes. For example, it is a criminal offence to withhold someone else’s passport, which is a common occurrence in trafficking cases.

Identifying trafficking in the community

Police working on the frontline, such as police community support officers (PCSOs), also appear to have difficulty in identifying trafficking. In one instance presented to the ATMG, the police were called to premises where a woman was behind a locked door. Though they were suspicious of the circumstances, they left without seeing the woman or determining whether the door was locked from the outside. Fortunately, after the officers were instructed to return it materialised that this was not a case of trafficking; however, this incident serves to highlight the police’s lack of confidence in identifying potential trafficking indicators, coupled with, as one officer stated, pressure to get to the next job.

In another case uniformed officers attended a site from where trafficking complaints were made. This is problematic as the exploiters are often in the vicinity of the trafficked persons, rendering them unable to disclose for fear of imminent reprisals. It is good practice to speak to trafficked persons away from the premises to reduce the trafficker’s hold over them, and to have plain clothed officers attend. Working with representatives of specialised agencies or NGOs at the site helps to counteract any fears that the trafficked persons may have of the police. In such raids or strikes, experienced police stated that it is good practice to involve interpreters to be able to establish effective communication from the outset.

Similarly, a report of potential mistreatment of workers resulted in law enforcement officers attending the workers’ accommodation. Unfortunately, the officers concluded that although living conditions were far from adequate and heavily overcrowded, it was a marked improvement than what the workers were used to. This shows that both a lack of knowledge as well as cultural assumptions inform decision-making and potentially lead to adverse consequences for trafficked persons. Overcrowding is listed as one of the indicators of forced labour, included in guidance, such as the ILO indicators¹⁵⁴ and the Ministry of Justice’s *Circular 2010/07 Slavery, servitude and forced or compulsory labour: Implementation of section 71 of the Coroners and Justice Act*.¹⁵⁵

¹⁵⁴ ILO, *supra* note 124.

¹⁵⁵ Circular, *supra* note 123.

Misconceptions around exploitation

There is no consensus of who constitutes a victim of trafficking, possibly owing to ambiguities in UK legislation. In the absence of mandatory training on how to identify trafficking (see below), the police, like other CJS actors, may be subject to prejudices that may influence what they perceive to be trafficking.

Common myths surrounding trafficking include: trafficking predominantly involves illegal migrants, foreign women and girls for the purposes of sexual exploitation; victims are confined to the place of abuse; genuine victims are forcibly brought to the UK and will always ask for assistance; trafficking is analogous with smuggling; those who knew what work they were going to do, agreed to come and were “only” deceived about the conditions cannot be trafficked against their will because they should have “known better”. Responding inappropriately to such situations may result in further exploitation or harm and have consequences for sustaining successful prosecutions.

In general, participants reported that it is more difficult to identify forced labour, including domestic servitude, as it is often more difficult to detect than sexual exploitation. While the overall perception is that trafficking is hidden, anti-trafficking experts contest this view: “While many labo[u]r migrants are indeed in these closed places, many male victims of trafficking work in construction in large cities, working in plain sight of the authorities and the general public and often side by side with other non-trafficked workers. These victims may be much more visible than women trafficked for prostitution, and yet they are often not identified, however this reason alone does not account for the vast underreporting of male trafficking”.¹⁵⁶

Furthermore, the rise of anti-immigration discourse in the media may have led to a perception that victims of labour trafficking are all illegal and “they got what they deserved”. Where a lack of understanding prevails, the trafficked person’s immigration status can also become the focus of enforcement rather than the exploitation they experienced. The ATMG knows of a number of cases where trafficked persons were accused of fabricating their account to gain asylum. It appears that some authorities put greater weight on immigration status rather than the crime committed against the trafficked person.

In one case an exploited domestic worker left her employer and wanted to report the abuse to the police, and “*although she had a completely legitimate visa, etc., the police officer’s response was ... “she’s moved employers now and therefore she ought to be deported because the visa is no longer valid” which was an incorrect application of the law ... but the response of the officer was to look at the immigration issues*”.¹⁵⁷ Conversely, the changes in April 2012 to the Overseas Domestic Worker (ODW) visa, which no longer permits a worker to change employer, makes it more difficult for newly arrived domestic workers to approach the police for fear that they will be immediately deported because they have left their employer and the visa is no longer valid.

Frontline police training

Article 10(1) of the Convention and Article 18(3) of the Directive create a requirement for training, stating that “Member States *shall promote regular training* for officials ... including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.”¹⁵⁸ Furthermore, training of officials likely to come into contact with trafficked persons forms part of the assessment of whether or not the UK is meeting the standard of diligence. Gallagher states that “Frontline law enforcement agencies require strong and consistent support, including resources, training, and direction to do this job properly. Their ability to contribute effectively to an effective criminal justice response to trafficking will also depend on the extent to which the frontline

¹⁵⁶ Rosenberg, *supra* note 58.

¹⁵⁷ Her visa was issued prior to the 2012 visa regime change. See *All Change*, *supra* note 13, p.36-37.

¹⁵⁸ Emphasis added.

relationship with the specialist response unit is clarified, understood, and accepted”.¹⁵⁹ The ATMG concludes that where misconceptions of trafficking (discussed earlier in the report) occur on the frontline, these tend to stem from a lack of training for such law enforcement officers.

Current training programmes for frontline police are neither promoted nor regular, calling their effectiveness into question. Current e-learning training on identifying trafficking is driven by the National Centre for Applied Learning Technologies (NCALT). This particular module is aimed at “all officers with any contact with the public (both operational and in call handling/reception desk type duties). It is also available to all Police Community Support Officers and public-facing staff”.¹⁶⁰ It takes one hour to complete and covers the following: indicators of trafficking; the NRM; and a fictional account of a domestic servitude situation. Though the NCALT package refers to the NRM, it does not fully explain it, which may explain the inconsistent picture across the country in terms of police force referrals. The package is currently not mandatory in all forces, neither is it updated. The IDMG report states that 15,000 police staff have completed the NCALT training, which is around 10% of the overall UK police force.¹⁶¹

Officers interviewed questioned the effectiveness of the NCALT package. One law enforcement officer asserted “*it gives you a revision test ... and it won't go to the next module until you answer all the correct questions, so therefore you can by pushing the right buttons get through it quite quickly without having to take it in*”. It is also extremely difficult for an officer to digest the complexities of trafficking, legislation, and forms of exploitation in one hour. This is a criticism of the method of learning adopted by the NCALT package in particular rather than a problem with the module.

Respondents were of the opinion that face-to-face training can have a greater impact for achieving a deeper understanding of the complexities of trafficking. Competency based-learning was suggested as a better approach allowing for information and case studies to be discussed. However, some forces complement the NCALT package with their own training or source such training from NGOs.

Good practice in training – Operation Thames

In Sussex Police, there are 5,200¹⁶² officers including PCSOs employed by the force. 280 officers have completed the NCALT package. 1,300 officers had also already completed their force specific training package.¹⁶³ In total, this amounts to 30% of Sussex Police. This was further complemented by two multi-agency seminars. An increase in training uptake has yielded increased NRM referrals.¹⁶⁴

Conclusion

Timely and correct victim identification is critical to the successful prosecution of traffickers. Yet, many trafficked persons go unidentified as they are often refused assistance when they present at police stations or they are not identified when encountered in the community. This appears to stem from a lack of knowledge of trafficking indicators; misinterpretation of trafficking, forced labour and servitude definitions; and misconceptions on how trafficked persons behave. While not all law enforcement officers will come into contact with a trafficked person without systematic training to mainstream and embed knowledge in all forces and across all ranks, there is a risk that an untrained officer may

¹⁵⁹ Gallagher, A. & Holmes, P. ‘Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Frontline’ *International Criminal Justice Review* Vol.18:318 (2008) p.326.

¹⁶⁰ See: www.ncalt.com/courses/eLearning_courses.asp?LDN=New&show=course&id=114.

¹⁶¹ Home Office, *supra* note 48, p.40.

¹⁶² Sussex Police, *Who we are* [online]. Available at: <http://www.sussex.police.uk/policing-in-sussex/the-organisation/who-we-are/> [last accessed March 2013].

¹⁶³ *Ibid.*

¹⁶⁴ Home Office, *supra* note 48, p.52.

respond inadequately to a trafficked person and may not channel the case to the correct department. It is also vital that professionals, especially the police, who work with trafficked persons, understand the complexities of the crime and ensure that their actions are not detrimental to the individual's recovery or for the outcome of the criminal proceedings.

Recommendations

- **Ensure all frontline police, including front desk staff, receive mandatory basic trafficking training complemented by regular updates to reflect changes in traffickers' modi operandi.**
- **Guidance should be readily available at all police stations to stop the practice of declining assistance to trafficked persons wishing to report trafficking.**
- **Ensure such training includes competencies to understand the physical and psychological impacts of trafficking, including providing a trauma-informed response and how to establish meaningful communication with trafficked persons.**

Chapter 5: Investigating trafficking

The investigative stage of a trafficking case is of significance for the CPS's charging decisions. Certain variables, such as the strength and diversity of the evidential package, will impact on whether an investigation will lead to a prosecution. To obtain such evidence, it is important that trafficking and its complexities are well understood and that adequate resources are available for the investigation. Because of the psychological impact that trafficking may have on a trafficked person (see Chapter 1), it is essential that their needs are also integrated into the investigation, to ensure that the person is fit and able to participate in criminal proceedings against their trafficker.

This chapter will outline:

- Development of anti-trafficking law enforcement over the past decade in England and Wales;
- Capacity to investigate trafficking offences;
- NRM decision interplay with investigations;
- Understanding the victim's needs, including support, during the investigation;
- Benefits of developing specialism and specialist policing;
- Policing priorities.

Convention and Directive obligations

One of the main purposes of the Convention is to ensure effective trafficking investigations. Article 27.1 of the Convention and Article 9.1 of the Directive stipulate that investigations into trafficking offences need not be initiated by a victim or be sustained by their involvement within criminal proceedings, and may continue even if the trafficked person withdraws their statement. This acknowledges the fact that trafficked persons seldom report trafficking to the authorities for a multitude of reasons which include: fear of reprisals against their families or themselves; trauma suffered may make it unsafe for them to participate; or they may simply wish to forget their ordeal, return home and secure decent employment.

The requirements to investigate trafficking are underpinned by the positive obligation on the UK under the European Convention on Human Rights (ECHR) namely, Articles 3¹⁶⁵ and 4,¹⁶⁶ which are embedded into UK domestic law through the Human Rights Act 1998.

A decade of anti-trafficking law enforcement in England and Wales

There are 43 police forces¹⁶⁷ in England and Wales and each of these forces operate autonomously. Therefore there is variation in organisational structure, planning and force priorities which impact upon anti-trafficking responses within each region.¹⁶⁸ Current police practice would suggest that there is still a need for a nationwide anti-trafficking policing strategy, as whilst the number of potential trafficked persons identified has steadily risen, this has not been followed by a rise in prosecutions. In addition, of those cases that make it to trial there has been a decrease in the number resulting in a conviction (see Chapter 3).

Anti-trafficking operations began more than a decade ago with Operation Reflex, which was launched to respond to illegal immigration, following the suffocation of 58 Chinese migrants who were found in a lorry entering the port of Dover in 2000.¹⁶⁹ Reflex was a multi-agency taskforce.¹⁷⁰ The added value of

¹⁶⁵ Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

¹⁶⁶ 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.

¹⁶⁷ As of March 2010, see: *Association of Police Officers, APA Police Service Strength Map Update*. Available at: <http://www.apa.police.uk/publications?publicationid=2590>.

¹⁶⁸ Newburn, T., *Handbook of Policing* (Taylor & Francis, 2011).

¹⁶⁹ Casciani, D., 'The man who smuggled 300 people' BBC News, 11 February, 2005 [online]. Available at: www.news.bbc.co.uk/1/hi/uk/4257397.stm [last accessed March 2013].

multi-agency teams was described by law enforcement: "... [we] have seen enormous benefits from gaining access to information they could not previously see without a great deal of bureaucracy."¹⁷¹ In addition to its domestic operations, Reflex established a large network of liaison officers working abroad to collect intelligence and prevent trafficking at source and in transit. Reflex was financed by the Home Office which allocated £20 million for its operations. Before it came to a close in 2008/2009, it received partial support from UKBA. Reflex funded the operations of intelligence and tactical units within participating police forces, namely South Yorkshire, West Yorkshire, Humberside (combined), Merseyside, Kent, Essex, East Midlands, and the Metropolitan Police Service (which constituted the Anti-Trafficking Unit formed in 2007 and disbanded in 2010).

Therefore from an early stage, pockets of specialised and skilled police developed in these regions. Indeed, the first trafficking prosecution in the North East resulted from a joint investigation conducted by its Reflex unit.¹⁷² Reflex was described as a family where participating forces met periodically to share information, solve problems and discuss emerging issues. However, as one law enforcement officer stated, "*once that [Reflex] was gone that didn't happen anymore*". The development of specialised skills is reflected in a higher number of NRM referrals and a higher number of investigations by police forces that participated in Reflex.¹⁷³

Reflex also funded Pentameter I in 2006 and Pentameter II in 2007.¹⁷⁴ These operations involved simultaneous and coordinated nationwide anti-trafficking investigations conducted by 55 police forces into all forms of exploitation. Pentameters' aim was to raise awareness, attempt to ascertain the scale of trafficking, recover victims, and to galvanize police efforts, intelligence and experience on trafficking, with a view to embedding anti-trafficking efforts across all UK police forces as a core policing function. Following Pentameter I, the UKHTC was established, also using Reflex funding, with the same aim to firmly embed anti-trafficking efforts into policing. In 2010, UKHTC (see Chapter 6) was incorporated into the Serious Organised Crime Agency, which oversees its budget. Despite these developments, current police practice lacks uniformity in responding to trafficking effectively across England and Wales.

Investigative obligations

The UK has a positive obligation to investigate trafficking and to exercise due diligence. This obligation was clarified by the European Court of Human Rights (ECtHR) in *Rantsev v Cyprus and Russia*.¹⁷⁵ The judgment highlights two distinct positive duties: a duty to investigate credible allegations of human rights breaches; and an operational duty to protect persons from future human rights violations. This obligation applies to all governmental agencies with law enforcement responsibilities. The ECtHR judgment was reaffirmed in the UK in 2011 when a group action was brought against the Metropolitan Police Service (MPS) in *OOO & Others v Commissioner of Police for the Metropolis*¹⁷⁶ for failing to undertake investigations into child trafficking for domestic servitude. When finally investigated, the case resulted in the successful prosecution of Lucy Adeniji (see Annex II). The MPS argued that the claimants refused to cooperate in the investigations therefore preventing them from initiating enquiries. Justice Wyn Williams, finding in favour of the claimants, stated that the police failed in their duty to investigate in 2006 and 2007. It was held that the police should have investigated given they had access to witness statements. Mr Justice Williams also reinforced the ECtHR judgment which concluded that the authorities shall:

¹⁷⁰ The National Crime Squad (now apart of SOCA), National Intelligence Service (now apart of SOCA), Immigration Service (now UKBA), Passport Agency (now the Identity and Passport Service) and Crown Prosecution Service coordinated by the Association of Chief Police Officers (ACPO) and its Scottish counterpart.

¹⁷¹ POLICE - The Voice of the Service, *Human Trafficking: Reflex action* (2005) [online]. Available at: www.policemag.co.uk/Archive/2005/0905/0905.pdf [last accessed March 2013].

¹⁷² *Ibid.*

¹⁷³ See for example: Damian Green, HC Deb 3 November 2010, c861W.

¹⁷⁴ Gloucestershire Constabulary, *Pentameter: operational overview* (2006) [online] Available at: www.cps.gov.uk/publications/docs/pentameter_0706.pdf [last accessed March 2013].

¹⁷⁵ *Rantsev v Cyprus and Russia* App no 25965/04 (ECHR, 10 May 2010).

¹⁷⁶ *OOO & Others v Commissioner of Police of the Metropolis*. [2011] EWHC 1246 (QB).

- Take necessary and available steps in order to secure relevant evidence.
- Promptly and reasonably expedite enquiries.
- Urgently respond where a trafficked person is in a harmful situation and there is availability for removal.
- Cooperate effectively with relevant authorities of other States where trafficking investigation occurred outside their territory.
- Investigate in a manner which is capable of leading to the identification and punishment of the perpetrators – an obligation not of results but of means.
- Involve the trafficked person or the next of kin in the procedure to the extent necessary to safeguard their legitimate interests.
- Investigation is not dependent on a victim/ next-of-kin complaint to commence an investigation – once the matter has come to the attention of the authorities they must act of their own motion.

The research indicated that failure to investigate is not uncommon. This is particularly true with regard to domestic servitude, as service providers and legal practitioners reported that they struggled to get the police to investigate this type of exploitation. With respect to diplomats who traffick domestic workers, their diplomatic immunity continues to shield them from prosecution thus perpetuating impunity across this group.

During the research, the ATMG was made aware of two ongoing actions against the police that were underway for failure to investigate allegations of domestic servitude. One of the cases concerns breaches in 2010 and 2012, where it was alleged that there was a failure to identify child trafficking due to: an incorrect understanding of the nature and constituent elements contained within trafficking offences, a complete failure to understand that in the context of trafficking a minor is unable to consent to their exploitation, and a failure to consider and pursue evidence to support a prosecution. At the time of publishing, the charity Liberty states that it intends to represent another victim of domestic servitude to pursue a civil claim against Hertfordshire Police. In this case, concerning physical and sexual abuse, Liberty alleges that the woman's account was not taken seriously and was not adequately investigated. Most concerningly the police took the victim back to their exploiter.¹⁷⁷ Again, evidence to prove intention to exploit prior to bringing her to the UK could not be substantiated in this case.

Some participants stated that there is a tendency to prioritise certain cases, such as trafficking for sexual exploitation. Prioritisation breaches the positive obligations set out in OOO as they refer to all types of trafficking. This may be due to more experience and confidence in dealing with sex trafficking within police forces, or due to the view that sex trafficking is more harmful than other forms of exploitation. The media may support such views, as one law enforcement practitioner said:

“... peoples’ initial reaction is that sexual exploitation is quite horrific, therefore if you have to prioritise then that’s where the resources go. It’s not quite as attention grabbing when you say these people were forced to work in a field for 16 hours a day - it isn’t as exciting as this woman was made to have sex with 16 men a day. To get public support and therefore government support, if you focus on the headline one, you can then start looking at the others.”

Implementing investigative obligations

Some positive developments in police practice were noted resulting in landmark cases such as the first conviction for trafficking out of the UK under s. 59 of the SOA in *R v Anthony Harrison*¹⁷⁸ (see Operation Quartzire below) and a conviction for the exploitation of British nationals in *R v John and*

¹⁷⁷ BBC News, ‘Man jailed for abuse of ‘enslaved’ woman in London’ 16 May 2013 [online]. Available at: <http://www.bbc.co.uk/news/uk-england-london-22552912> [last accessed May 2013].

¹⁷⁸ *R v Anthony Harrison* at Woolwich Crown Court, July 2011.

Josie Connors.¹⁷⁹ In summary, interviewed respondents stated that successful cases reflected an interest in and a desire to carry out such investigations, greater understanding and support of the trafficked person and a solid knowledge of trafficking legislation including the evidence required to prove the constituent trafficking elements. However, a normative change is yet to materialise across the police in terms of investigating trafficking.

In the UK, Crime Investigation Departments (CID) investigate criminal offences and CID detectives can be generalists who investigate a range of crimes. Evidence gathered suggests the police's ability to investigate trafficking is in a state of flux owing to competing interests, including staff turnover. Participants were concerned that investigating officers, like their frontline counterparts, lacked awareness and understanding of trafficking. One law enforcement officer stated:

"[Trafficking cases] go to our local [CID] who really don't know what they are doing ... it will get some token investigation but it won't really get dealt with properly because there [aren't] the people with the knowledge there to deal with it".

Trafficking investigations can be, but are not always, complex, time consuming and resource intensive, especially where trafficking is transnational in nature requiring international cooperation to obtain evidence. For example, in Operation Golf, the UK and Romanian police worked together to dismantle a trafficking network that forced children to commit petty crime (see Chapter 6).

Interviewed respondents cited that a lack of understanding of how trafficking operates in some cases leads to poor investigative techniques. It was suggested by respondents that in some circumstances, police tended to compartmentalise investigations, charging suspects based on the facts before them rather than carrying out a more thorough investigation, possibly due to a lack of knowledge of trafficking indicators. It can be argued that this approach, in effect, prevents the trafficker from being charged for the full extent of the offending.

Case Study – Operation Quartzire¹⁸⁰

In May 2009, a 16-year-old Nigerian female arrived unaccompanied at Heathrow on someone else's passport. When discovered, the girl claimed asylum and was put into local authority care. Police noted that her account appeared "well-prepared". She fitted the profile of a potential trafficked child from Nigeria. She later absconded from care, leaving all of her belongings. Six days later she tried to enter Spain on an easyJet flight from Luton to Madrid with a forged Dutch identity card. As a result, she was returned to care in the UK and the then MPS dedicated Anti-Trafficking Unit were informed. The investigating officer was able to trace the credit card used to purchase the flight.

Through a court order, credit card statements were obtained and the credit card usage determined. The statements indicated that money had been added to the card at a store to purchase the flight along with clothes and a mobile phone. CCTV footage was obtained and a suspect identified. The easyJet booking also revealed an email address used to create a booking account. The email address was used to carry out further research which linked with several Facebook and social networking accounts showing a profile picture which matched that of the suspect on the CCTV footage. As a result of monitoring the suspect's bank account in August 2009, the investigating officer was alerted to a new ticket purchase for a flight from Luton to Athens, Greece.

The investigating officer requested that Bedfordshire Police apprehend the passenger attempting to

¹⁷⁹ *Connors, supra* note 50.

¹⁸⁰ *R v Anthony Harrison, supra* note 178.

board the flight. Police stopped a child travelling with a forged Dutch identity card. At this stage, the police did not know if the female was trafficked or a trafficker going to collect another child.

Bedfordshire Police were instructed to make the arrest appear to be a random stop, and not to mention the MPS investigation or trafficking, in case there was someone shadowing the girl and to keep the investigation covert.

The female was arrested and charged with possessing a false identity document with intent but she pleaded not guilty. The investigating officer requested to see her defense statement, which stated that she was from Nigeria and was being sold for sex and disclosed that she had been taught how to be a prostitute at a “school” in Nigeria. The officer disclosed his investigation to the CPS and the criminal charges were dropped against her. She was released into the care of the officer who had arranged immediate support from the NGO The Poppy Project who noted that she was not an adult as expected and she was eventually age assessed later as a child of 14 years old (see Chapter 9).

After trust was built with both of the identified children, their video recorded statements taken and participation gained as witnesses, a suspect was arrested in November 2010 on suspicion of trafficking for the purposes of sexual exploitation, false imprisonment and rape. He denied the charges and his address was searched, a computer was seized and photos of the trafficked children were found. The digital signature of the photos matched the suspect’s own camera. In combination this evidential package secured the conviction of Anthony Harrison in July 2011 at Woolwich Crown Court. He was sentenced to 20 years for trafficking two Nigerian girls into and out of the UK, using Juju to control them. This was the first conviction for the offence of trafficking a child out of the UK for the purposes of sexual exploitation.

Domestic servitude cases have their own specific difficulties as the offending usually occurs within the private domain and corroborating evidence may be difficult to obtain. Further complications may stem from traffickers fabricating allegations of theft to remove suspicions against them and to redirect attention to the trafficked person. Also, some domestic workers may bring their employer’s children up from an early age and feel a sense of loyalty towards them. One trafficked person who had mixed feelings about prosecuting her trafficker stated:

“I was very torn. I wanted them punished but there were children and I did not want [the children] to suffer from losing a parent. But I wanted the trafficker to suffer like they made me suffer”.

Nevertheless domestic servitude specialists observed that there have been successful investigations and convictions. For example, service providers stated that when police raided the trafficker’s residence and recovered the trafficked person, the police could gather information on living arrangements and conditions before the suspect has time to tamper with the evidence. In this respect, the use of health and safety officers may assist in investigations by inspecting properties to evidence poor living conditions in all trafficking cases. Also, experts stated that exploitative employers may file missing person’s reports in cases where domestic workers flee the employer’s house and that should raise suspicions and trigger investigations.

Resourcing investigations

A reduction in police resources was identified as a key issue affecting the ability of the most skilled and knowledgeable investigators. Worryingly, the police budget will be reduced by 23% in the next four years,¹⁸¹ which is likely to exacerbate the difficulties raised in this report. A legal practitioner

¹⁸¹ Travis, A., ‘Theresa May approves radical overhaul of police pay and conditions’ 15 January 2013, The Guardian [online]. Available at: www.guardian.co.uk/uk/2013/jan/15/theresa-may-police-pay-conditions [last accessed March 2013].

defending a trafficked person for forced cannabis cultivation, who had been charged with drug offences, asked the police why the mobile phones which were seized in the course of the investigation against their client were not traced, and was met with the following response: “*That’s too expensive, serve us a defence statement and then we’ll think about it*”. The legal practitioner stated that the police also, “*accepted ... that it was an organised gang that had facilitated the cannabis factory and yet there was no suggestion in the unused material [of] any investigation*”. It is noteworthy that the ATMG could not ascertain any prosecutions of forced cannabis cultivation traffickers under trafficking offences.¹⁸²

The clandestine and transnational nature of trafficking means that investigatory techniques and evidence gathering is often very expensive. Where trafficking involves foreign nationals the cost of the investigation doubles immediately because of the need for interpreters. It is also important to note that a reduction in resources will inevitably result in staff cuts which in turn will mean that intelligence gathering capacity is reduced. Some interviewed law enforcement officers were concerned that the little resources that were available for trafficking investigations were now being directed towards the internal trafficking of British children for the purposes of sexual exploitation at the expense of other trafficking cases.

Types of investigation

There are three main methods of investigating trafficking: (1) Proactive investigations involve an overall strategy for tackling a criminal network i.e. investigative focus, multi-agency collaboration, tactics employed to collect solid intelligence and evidence gathering, the offences pursued and the best location for instituting the prosecution;¹⁸³ (2) Reactive investigations are triggered by victim complaints;¹⁸⁴ and (3) Disruptive investigations, which in its basic terms, are intelligence-led policing, acting out of the formal judicial system, creating obstacles or inconveniences for individuals participating in criminal network.¹⁸⁵ Disruption should be given a wide interpretation ranging from arrests, closures of premises, or recovering assets etc. For example, if a person responsible for transporting exploited workers drives without a licence or insurance, the police may arrest them on those charges and frustrate a part of the traffickers’ operation. To do so, in theory, removes a “key” player thus destabilising the network.

There has been greater emphasis on disruption strategies to tackle trafficking, which provides an opportunity to overcome large workloads requiring less police time and resources while still being measurable by performance targets. The Government asserts that “[d]isrupting the activities of organised crime groups is just as important as having in place the appropriate legislative framework”¹⁸⁶ and that such strategies are “generally far more effective in the long run”.¹⁸⁷ Contrary to this position, the UNODC states “[d]isruption, however, does not provide long-term solutions and may only displace the crimes to another location.”¹⁸⁸ As trafficking networks are fluid and robust there is no guarantee that any given action will disrupt a network. For instance, the trafficking network may only be momentarily disrupted until a replacement person or premises can be found. Indeed participants informed the ATMG of instances where brothels connected to exploitation had been closed only to appear again in a short period, and traffickers who were bailed for low level offences immediately moved from one agency to another and carried on their exploitative activities. To ensure disruption has been effective may require intensified surveillance and may therefore be more costly in the long-

¹⁸² The only case with reference to forced cannabis cultivation that the ATMG could locate was *R v Vu* at Northampton Crown Court, 1 February 2010. These defendants were charged with immigration offences, obtaining property by deception, making false declaration of marriage, and transferring and concealing criminal property. See Bedfordshire on Sunday, ‘Court nails cruel people trafficker who married sis’ 14 February 2010. Available at: www.bedfordshire-news.co.uk/News/Court-nails-cruel-people-trafficker-who-married-sis.htm [last accessed 11 March 2013].

¹⁸³ Friesendorf, C., *Strategies Against Human Trafficking: The Role of the Security Sector* (September 2009).

¹⁸⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (November 2008), p.179.

¹⁸⁵ Innes, M. & Sheptycki, J., ‘From Detection to Disruption: Intelligence and the Changing Logic of Police Crime Control in the United Kingdom’ *International Criminal Justice Review* Vol. 12 (2004), pp.1-24.

¹⁸⁶ *Internal Review*, *supra* note 127, p.5.

¹⁸⁷ *Ibid.*, p.9.

¹⁸⁸ UNODC, *supra* note 46, p.199.

term. Therefore a more nuanced approach needs to be adopted when evaluating the effectiveness of disruption strategies.

Interviewed law enforcement officers stated that in general those occupying the end of the trafficking chain, such as the enforcers, with the occasional middlemen, are being prosecuted. In effect this disrupts the criminal activities. However, the roots of the problem i.e. the recruiters and persons financing trafficking activities who are far removed from enforcing the exploitation, may continue their activities linking into other trafficking groups or recruiting others. Thus a focus on prosecuting traffickers operating solely in the UK may only provide a sticking plaster to the problem rather than a durable solution. It was stated that to fully impede traffickers' activities each network must be fully dismantled. Though disruption strategies have their place, prosecuting trafficking effectively requires proactivity and cross border working (see Chapter 6).

National Referral Mechanism (NRM) and investigation interplay

The NRM framework has a specific purpose of identifying trafficked persons and ensuring they receive appropriate protection and support. However, this research found that investigations and prosecutions can be jeopardised when a trafficked person, who wishes to participate in the investigation, receives a negative NRM reasonable grounds decision. This is of concern as the police and support providers state that these decisions can be poorly made especially where UKBA is the Competent Authority adjudicating on such matters.

UKBA officials regularly base their NRM decisions on a credibility assessment based on coherent, consistent and undelayed disclosure from the trafficked person. It is well documented that trafficked persons may only disclose their experience over a period of time and their account may be inconsistent because of trauma suffered. The UKBA Competent Authority Guidance also makes concessions for "mitigating factors" such as "incoherent, inconsistent or delays providing details of material claimed facts" i.e. genuine trafficked persons' accounts may present in this way.¹⁸⁹ However, these "mitigating factors" appear to be rarely considered in UKBA NRM decision-making. This is possibly due to an emphasis on credibility in the Guidance that is somewhat at odds with the "mitigating factors" as they themselves can be viewed as indicators of non-credibility. It is important to note that such a criterion on credibility is not envisaged by the Convention.

Poor UKBA NRM decision-making has affected trafficked persons' permission to stay in the UK where they are participating in an investigation. It appears that UKBA's priorities, in relation to decreasing net migration, is at odds with the CJS's endeavours to prosecute trafficking. One law enforcement officer who experienced such inconsistency stated about the primary role of the UKBA in trafficking decision-making:

"... the prime example is of two females, both from a West African country who were trafficked at the same time, are [exploited] in the same brothel, have the same account, one was recognised and one was not ... It's a lottery."

In this case, referred to in the quote involving different UKBA NRM decisions, both trafficked children were participating in a high profile and ultimately successful investigation against their trafficker; however, initially UKBA attempted to remove them from the UK. The decision to remove was challenged by the officer who argued that they would be at substantial risk should they be returned to Nigeria due to their participation in the investigation.

A negative NRM decision may also impede the commencement of an investigation, as one ex-police officer described:

¹⁸⁹ UKBA, *Guidance for the Competent Authorities* [online]. Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary [last accessed March 2013].

“[B]ecause the NRM decision is only on the balance of probabilities and if they [the police] are looking to prosecute [which has] to be on a higher level of proof, i.e. the beyond reasonable doubt, then they [the police] probably won’t continue an investigation because it’s a different level of standard of proof and if it’s failed at a lower standard of proof [balance of probabilities] then it’s going to be incredibly difficult to get it to the higher level of proof.”

In one example presented to the ATMG, a potential trafficked person reported rape and trafficking to the police but subsequently received a negative NRM decision from UKBA. The case was submitted for judicial review and the potential trafficked person was informed that the police would not proceed with an investigation unless the judicial review was successful. The police also stated that UKBA had already undertaken an investigation and found them not to be trafficked and therefore they would not duplicate the investigation carried out by UKBA. This seems to be contradicted by the position that if the judicial review is successful the police will investigate. The ATMG has learnt that this is not an isolated case of a trafficking investigation being dependent on a conclusive grounds decision.

Furthermore, UKBA does not share with the police intelligence from NRM referral forms or asylum applications where trafficking is raised. This, in part, is due to victim confidentiality which is an important element of the Convention and Directive. However, it has been suggested that this may be overcome by inserting a clause in the NRM form which trafficked persons can tick to indicate that their information can be shared with the police. This must be strictly obtained with the fully informed consent of the trafficked person. Furthermore, they must understand how their information will be used and the possible implications of sharing such information.

In other instances the decision made in NRM referral forms completed by the police was not communicated back to officers, which affected case planning. In one recent case, a legal practitioner, representing a trafficked woman brought to the UK for sexual exploitation, pointed out to the police that the information UKBA holds on persons travelling to and from the UK can include biometric data on potential traffickers, including their client’s trafficker. Initially the police responded negatively to this because of the general difficulties in obtaining intelligence from UKBA.

Interpreters

Participants from all stakeholder groups reported difficulties in using interpreters.¹⁹⁰ Incorrect interpretation can erode the investigation, resulting in lost or misunderstood information. Problems commonly cited by participants include: interpreters allocated to cases who spoke similar but not the same dialect resulting in incorrect information being received; lack of interpreters who spoke rare dialects; paraphrasing where verbatim interpretation is required; interpreters being uncomfortable or unable to interpret sensitive subject matters, particularly sexual content or cases involving Jujū; discrimination or tensions in situations when interpreter and victim are from different ethnic, cultural, class or religious backgrounds (also see Chapter 9 for child-specific issues). Moreover, as police perception can affect the trafficked person’s behaviour (see below), so can interactions with interpreters if they are psychologically or emotionally unsuitable.

Whilst using volunteer interpreters, family members or other victims to interpret may save costs and time, this should be avoided unless absolutely necessary, as there is a risk that they may be connected with the trafficking network. To avoid problems with interpreters it is good practice to use the same interpreter throughout so as to restore a sense of stability for the trafficked person as well as obtaining feedback from them afterwards to ensure they are happy with the interpreter’s services.

On 30 January 2012 the Government restricted interpreter services in England and Wales to a single agency, Applied Language Solutions. This exercise was said to reduce interpreter and translation costs by £18m per year while interpreter allocation would be more effective. This has caused

¹⁹⁰ An interpreter interprets speech, while a translator translates writing from one language to another.

difficulties for the police in both quality and delays thus affecting investigations.¹⁹¹ Many of the previously tested interpreters did not register with the agency because they would receive lower wages. Therefore interpreters with whom police had developed prior trusting relationships could not be used, or if they were working under the scheme there was no guarantee that they would be allocated to the investigation.

Misperceptions of exploitation which hamper investigations

Understanding of how a trafficked person presents as a victim is integral to investigations. However, evidence gathered suggests that misperceptions of victim presentation overshadow the development of trafficking investigations. The same misperceptions discussed in Chapter 4 can also affect investigator capacity to examine this crime, including the manner in which investigating officers interact with trafficked persons on the basis of such misperceptions. One law enforcement officer stated:

"We had a surveillance team following, Chinese girls that we thought had been trafficked around ... the team reported back saying 'well, this is a waste of time because I've just seen the girl travelling on her own with a little suitcase and she was smiling. So, this can't be trafficking!"

A retired law enforcement officer¹⁹², encountered similar episodes of seemingly happy women who were exploited whose reactions caused confusion for investigating police where they requested to remain with their trafficker and refused offers of assistance. To understand these reactions, the officer had to research the psychological aspects of trafficking to comprehend their position.¹⁹³

Mistaken beliefs of how a trafficked person should act coupled with incorrect interpretations of definitions, are sometimes used to judge whether a trafficked person is a credible victim of trafficking. It was stated that there was a difference in approach even in teams of the most experienced police. These views may be formulated on the basis of what is "rational" and "irrational" victim behaviour: the "irrational" victim does not "act" in a way that they perceive corresponds to a "normal" or "perfect" victim.¹⁹⁴ Indeed, the question posed which is the litmus test for many law enforcement officers and often for the CPS, defence counsel and the jury is "why did you choose not to escape?" In reality all trafficked persons react differently.

Some victim narratives may be construed as so terrible and out of the officer's cultural experience that they may appear inconceivable, leading to the view that they are fabricated. Furthermore, it was reported that during the course of interviewing trafficked persons, victim presentation such as laughing nervously, fixating on a particular part of their experience or wearing clothes that may seem inappropriate were also viewed with suspicion; however, this may be interpreted as a result of trauma. The psychological consequences of trafficking and people suffering from PTSD may also lead to numbness and dissociation, which make it less likely for a trafficked person to display overt signs of distress which other 'normal' crime victims may demonstrate.¹⁹⁵ These judgments were often erroneously used to frame the victim's unreliability and attest to a general inaptitude to understand and consequently to investigate trafficking.

In some cases, trafficked persons may only disclose partially, late or change their account. There can be multiple drivers for this including difficulty in recalling events due to the nature of trauma and

¹⁹¹ House of Commons Justice Committee, *Interpreting and translation services and the Applied Language Solutions contract*. Sixth Report of Session 2012–13, House of Commons (22 January 2013) [online]. Available at: www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/645.pdf [last accessed March 2013].

¹⁹² He was seconded to the UN Mission in Bosnia and Herzegovina's Special Trafficking Operations Project in 2002.

¹⁹³ O'Reilly J., *Sex Slavery: The way back* (2012).

¹⁹⁴ Herlihy et al., 'What Assumptions about Human Behaviour Underlie Asylum Judgments?' *International Journal of Refugee Law* (2010) Vol. 22:3, pp.351-366.

¹⁹⁵ Lucy Maddox, Deborah Lee and Chris Barker 'Police Empathy and Victim PTSD as Potential Factors in Rape Case Attrition' *Journal of Police and Criminal Psychology* (2011) Vol. 26:2, pp. 112-117.

PTSD.¹⁹⁶ A Consultant Psychiatrist also stated that they may also “*wish to protect the perpetrator or to protect themselves, but it can also reflect victims’ psychological defences against the pain and distress which full recollection of disclosure will trigger.*” Partial or non-disclosure can also be explained by the trafficked person’s feeling of shame and self-blame for what happened to them. Victims may withhold information if they feel ashamed about, or what they fear may change others’ perception of them. These feelings are known to be linked with the inability to seek help, agitation and avoiding discourse on the issue: being unaware of this may affect police perception.

In a case from 2010, the non-disclosure of a prior-trafficking experience, which came to light during an investigation, caused the police to view the trafficked person with suspicion and consider them an unreliable witness. The police did not allow them to explain the initial trafficking or be interviewed further. At court the case was stayed against the traffickers as an abuse of process, possibly due to poor preparation. More concerning, the police destroyed evidence in the case. The trafficked person was also denied compensation via the Criminal Injuries Compensation Authority (CICA – see Chapter 7) because they were informed that they had not cooperated with the police by withholding information.

Experts state that such health complications can have an adverse impact on how criminal justice actors perceive victims: “To the untrained eye, this confusion or lack of memory could be seen as lacking credibility and reliability rather than a psychological disorder associated with trauma.”¹⁹⁷ One law enforcement officer confirmed this and explained: “*Our investigators are saying, “don’t believe her; her story keeps changing” and we’re trying to say “it might do”. You have to remember, we are trained to look for inconsistencies, and this [trafficked person presentation] comes outside of our box.*” This presents a paradoxical situation for CJS actors as non-disclosure or difficulties recalling events are on the one hand tantamount to dishonesty, but also indicative of a trafficking experience.

In these cases an alternative approach has been suggested to establish meaningful communication with trafficked persons, especially those who initially refuse assistance. CJS actors should adopt “a non-threatening supportive approach ... within a safe environment that possesses a good atmosphere ... it requires a certain degree of expertise to be able to assist victims dissolving their state of survival.”¹⁹⁸ This also includes active listening skills; displaying empathy, sensitivity and a non-judgemental attitude towards the trafficked person; a willingness to try and understand their position; and employing positive non-verbal communication.¹⁹⁹

For these reasons, experienced officers stated that because of the psychological coercion experienced, trafficked persons frequently require a period of time to be able to disclose and for a full account to emerge. Following from this, the current standard 45-day reflection period provided by the NRM was criticised by law enforcement officers as insufficient. They argued that this period ought to be extended to improve the quality of disclosures from all trafficked persons thus improving investigations and evidence presented at court. Many trafficking experts have suggested a minimum of 90 days as a more appropriate reflection period (as encouraged by Article 11(1) of the Directive) given the complex impact of trafficking on victims.

Victim consideration during the investigation

The trafficked person is central to trafficking investigations and prosecutions, especially where the trafficker is charged under trafficking offences. This is because subjective victim evidence may be

¹⁹⁶ See. Bögner et al, ‘Impact of sexual violence on disclosure during Home Office interviews’ *The British Journal of Psychiatry* (2007) Vo.19, pp.75-81; and Herlihy J & Turner, S., ‘Should discrepant accounts given by asylum seekers be taken as proof of deceit?’ *Torture* (2006) Vol.16:2, pp.81-92.

¹⁹⁷ O’Reilly, *supra* note 193, p.51.

¹⁹⁸ *Ibid.*, p.53.

¹⁹⁹ *Ibid.*, pp.53-64.

required to demonstrate that an offence has been committed or the treatment received amounted to exploitation. As the defence counsel in the *R v Connors* case described: “One man's meat is another man's poison, one man's trash is another man's treasure and one man's slavery is another man's freedom.”²⁰⁰ It was also reported that the CPS were more likely to prosecute a case, a jury are more likely to convict and a more substantial sentence imposed when a victim testifies.

However, participants spoke of a lack of a victim-centred, human-rights based approach during investigations demonstrated by inappropriate interactions with trafficked persons due to misperceptions, lack of cultural awareness; and a failure to follow good procedural practice, such as Achieving Best Evidence (ABE) interviews²⁰¹ in particular labour trafficking cases.²⁰² This can affect the longevity of the trafficked person's support during the investigation and prosecution. Notwithstanding the above, there are exceptional examples where individuals adhered to good practice:

Good practice – victim-centred human rights-based approach to policing

A case presented to the ATMG was deemed by the service provider to be an exemplary trafficking investigation. The victim's needs were put at the forefront of the action taken by the investigating officer. The officer in question was inexperienced in trafficking investigations and first sought advice from a specialised trafficking unit. The victim was immediately referred to the NRM with a subsequent ABE interview conducted after two weeks had passed to give the victim time to recover and reflect. ABE interviews should be used for all trafficked victims. The officer arranged for the ABE interview to be conducted by the Sapphire Unit, which consists of experienced detectives and officers specially trained in investigating sexual offences. The officer was described through the investigation as warm and engaging. The officer regularly updated the victim on work that had been carried out on their case. Although the case did not progress despite all avenues being exhausted, the victim still felt listened to and happy with the way the investigation had been conducted.

Service providers also reported a tension between the best interests of the trafficked person and the police's need to gather evidence.²⁰³ In the UK, an offender can be held for 24 hours without being charged (permission to extend up to 96 hours can be granted by a magistrates' court). This can result in victims being pressured to talk to the police immediately. However, this may not be in the best interests of the trafficked person if they are traumatised. Furthermore, experienced police stated that it is counterintuitive to pressurise victims to give immediate statements as this may set back recovery and cause re-victimisation, which in turn may result in the unwillingness of the victim to participate later in the investigation and prosecution.

Conversely, this should not result in an overly protective or obstructive approach by service providers. A balance needs to be struck between victim's needs and the need to prosecute the crime. Indeed, it is also the victim's right to see their trafficker brought to justice. Adherence to human rights approach and multi-agency working with service providers is not only crucial, but can also provide for positive solutions. For example, service providers, such as the Helen Bamber Foundation (HBF), have begun to facilitate informal meetings where HBF clinicians can, to a certain degree, act as a liaison “bridge”

²⁰⁰ BBC News, “Servitude trial: Tommy Connors says men 'were paid'” 8 June 2012 [online]. Available at: www.bbc.co.uk/news/uk-england-beds-bucks-herts-18371342 [last accessed 11 March 2013].

²⁰¹ S.16 of the Youth Justice and Criminal Evidence Act 1999 permits ABE interviews to be played as evidence-in-chief where certain procedural standards are met. This reduces the potential impact of the court process on vulnerable victims by reducing the time spent in giving evidence under high-pressure conditions. They are described as good practice techniques available when interviewing vulnerable and intimidated witnesses, and should include all trafficked victims.

²⁰² In this regard the future *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* will strengthen provisions for victims of crime including trafficked persons.

²⁰³ This may include locating the offender and taking the victim's statement especially where a trafficker has been apprehended.

between the client and the police, if the client requires it. These meetings are carried out once HBF's office has been established as a place of safety where the client can feel secure. Meetings are carried out in a relaxed manner with few notes taken by plain clothed officers in the presence of an HBF clinician. If the victim is willing after an initial meeting, statements can be taken at HBF premises. Statements obtained in a less intimidating and more comfortable environment whilst supported by the organisation, can be conducive to more effective communication and re-traumatisation can be minimised in this environment.

Alternatively the trafficked person may decide to give an ABE interview, in which HBF clinicians will not sit in but can accompany the trafficked person to the special video suite to monitor distress and potential re-traumatisation. Furthermore, if the police require the trafficked person to identify the area or building where they were held, HBF clinicians can also accompany them in (what should be) an unmarked car with blacked out windows. Returning people to locations where they were held may trigger an extreme reaction in victims of trafficking, cause distress and destabilise or re-traumatise them.

Need for ongoing support until the trial

For the reasons discussed in Chapter 1, trafficked persons require access to support and assistance to participate safely in protracted criminal proceedings. Article 11 of the Directive recognises that adequate support stabilises the trafficked person and strengthens their ability to give evidence. Therefore support must be consistent, long-term, holistic and gender sensitive.²⁰⁴ Additional socio-legal stressors such as delays in NRM decisions or access to counselling may exacerbate pre-existing health needs leading to secondary victimisation. In addition, a forthcoming paper from the OSCE identifies the connection between torture and trafficking in human beings from a clinical perspective with regard to a correlation of harm inflicted and suffered.²⁰⁵ Therefore a more informed and detailed approach to the identification and protection of trafficked people needs to be developed, and appropriate standards for their clinical assessment and therapeutic care needs to be established.

Service providers are, however, concerned that trafficked persons have difficulties accessing counselling services post 45-day NRM reflection period due to funding and coordination issues. Consequently, when a trafficked person is integrating into a new community and awaiting trial - the crucial time in which victims need services - less support is available. Indeed the anticipation of giving evidence can be more stressful than actually testifying in court. A lack of counselling can damage a trafficked person's recovery, adversely affect their testimony and lead to negative trial outcomes.

In addition to the accessibility of services, the ATMG is concerned that trafficked persons are being discouraged from seeking counselling or therapy before trial to guard against changing their mind about participation or their evidence being influenced by their counsellor.²⁰⁶ One avenue regularly pursued by defence barristers, in rigorously testing the evidence for the defendant's right to a fair trial, is that of claiming the witness-victim testimony is contaminated, in that ideas have been planted during therapy sessions thus affecting consistency and reliability of witnesses. It appears that police, who are very aware of such arguments and how they may reduce the likelihood of a conviction, are ill-advising traumatised crime victims not to seek psychiatric help until after trial.²⁰⁷ This is despite guidelines introduced by the Home Office published in 2002,²⁰⁸ which clearly state that police or

²⁰⁴ Paragraph 3 of the Directive's Recital makes it clear that trafficking is gendered.

²⁰⁵ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, Trafficking in human beings amounting to torture and other forms of ill-treatment, Occasional Paper Series (forthcoming). This paper draws upon the collective experience of specialist staff and clients at the Helen Bamber Foundation.

²⁰⁶ This was so in the recent historical sexual abuse case of Frances Andrade where it was claimed that she was discouraged from seeking counselling by Manchester Police. See: Evans, M., 'Abuse victim Frances Andrade was told not to seek therapy, family claim. The Telegraph 10 Feb 2013 [online]. Available at: www.telegraph.co.uk/news/uknews/crime/9873310/Frances-Andrade-A-culture-of-abuse-denial-and-cover-up.html [last accessed 11 March 2013].

²⁰⁷ *Ibid.*

²⁰⁸ Home Office, *Provision of therapy for vulnerable or intimidated witnesses prior to a criminal trial: practice guidance* (2002).

CPS²⁰⁹ must not decide whether a victim or witness can receive therapy. It stresses that the decision should be taken by the person concerned and their doctors or professional counsellors. Furthermore, accessing specialised support, for example for substance related addictions, is more difficult as most service providers are not equipped to manage these issues. This is problematic as traffickers are known to target persons with addiction/dependency or introduce substances to gain control. One service provider stated:

"I have a case where the victim does want to give a statement but when he gets stressed he drinks, and he gets stressed about the police interview so I can't, at the moment, get him sober enough to do an ABE interview".

Many NHS services available for addiction/dependency have no experience or knowledge of how to respond to trafficked persons. A further complication in access to counselling is a requirement that existing addictions/dependencies are managed before a client can be registered. However, a shortage of facilities and long waiting lists make it impossible for trafficked persons to access such services at crucial times. It was also reported that victims with learning difficulties, who are also known to be targeted by traffickers, have problems accessing tailored services even where the impact of trafficking is understood.

In response to many of the women supported by TARA exemplifying trauma symptomatology, and to overcome long waiting lists for specialist psychological support and/or community based mental health (which are not tailored to the particular needs of trafficked persons), TARA has a seconded Consultant Clinical Psychologist and an Assistant Psychologist who are provided by NHS Greater Glasgow and Clyde COMPAS Trauma Service. These posts are funded by the Scottish Government to uphold its obligations to psychological support under the Convention and Directive. This has enabled TARA to promote a trauma-informed service and this expertise is used to advise the police and UKBA of significant mental health concerns.

Service providers were also concerned about the way in which the police explain to trafficked persons the ramifications of participating in an investigation. Some participants said that trafficked persons were not fully informed about the consequences of making a statement and often the processes around the CJS were not explained. Yet an informed witness has the potential to be a better witness. While the police have an obligation to advise trafficked persons clearly on such processes, service providers may find the DVD *Next Steps* produced by the charity Living Lens helpful. The DVD explains the CJS in England and Wales and the roles of the various actors to the women trafficked for sexual exploitation, including disclosing to the police, safety, preparing for court, special measures in court, and sentencing of traffickers and case studies of victims' court system experiences. In a similar vein, the CPS released the *CPS Public Policy Statement on Prosecuting Cases of Human Trafficking*²¹⁰ to allay fears that trafficked persons may have in relation to how their case may be handled; however, the existence of such a statement was said by research participants to have had little impact in persuading trafficked persons to participate in criminal proceedings.

Where victims were moved to another location under the NRM dispersal process, the police did not always sustain communication on the case's development. A law enforcement officer explained:

"... we'd instigated getting the victim to a place of safety. That was quite a distance away from our policing area and as a result it caused communication and staffing issues ... That actually caused quite a few delays and, again, there was no urgency in [getting a statement]. If it was something like a rape ... we have set deadlines where we have to go in to get the first account and secure evidence".

²⁰⁹ CPS, *Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial - Practice guidance* [online] undated. Available at: www.cps.gov.uk/publications/prosecution/pretrialadult.html [last accessed March 2013].

²¹⁰ CPS, *CPS Policy for Prosecuting Cases of Human Trafficking* (May 2011) [online]. Available at www.cps.gov.uk/publications/docs/policy_for_prosecuting_cases_of_human_trafficking.pdf [last accessed March 2013].

Regular communication needs to be sustained with trafficked persons when they are moved to other regions to ensure their continued participation (see Chapter 7). An experienced officer stated that such contact should be in person to show the importance of, and commitment to, the investigation. It was also stated that if the trafficked person wanted to return home then this should be permitted and regular contact sustained. There have been successful prosecutions where victims have given live video link testimony from countries of origin. To overcome heavy workloads and resources associated with regular contact, some participants recommended that an independent advocate should be allocated to ensure that the CJS process is understood by the trafficked person and for regularly updating them. This is notwithstanding the importance of consistency of officers working on the case.

Investigator training

Article 9 of the Directive stipulates, “Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.” To date there have been numerous training packages: UKHTC’s four-day senior investigating officer course (which was intended to be embedded into mainstream training by the end of 2009); a trafficking module was also scripted for National Policing Improvement Agency (NPIA) to train probationary police officers at ACPO levels. However, these initiatives appear to have lost momentum and have not been taken forward.

In 2012, Gwent Police produced a *Human Trafficking Training for Investigating and Senior Investigating Officers* course, which is accompanied by a restricted operational guide. This guide includes the topics of: types of trafficking; UKHTC tactical advice; support providers and the NRM; First Responders legislation; what to consider in the “golden hour” including risk indicators; contact points; and best practice across the UK. This guide is currently being approved by NPIA as well as senior investigators that have trafficking investigation experience. Many interviewees raised concerns in respect of the sustainability of this new training initiative given previous attempts to produce and embed trafficking into investigator training. To increase the number of prosecutions and convictions it is essential that police tasked with investigating trafficking undergo training which is embedded into training structures and, importantly, reflects the complexities of the crime.

Specialist units

There are two contrasting views in relation to the need for specialised units to investigate trafficking. One suggests that specialist units are needed because of the very complex nature of trafficking. Specialist units, as recommended in the EU strategy,²¹¹ have proved to be effective where used in the UK. Small specialised units within each force likened to the local human-trafficking task forces in the United States were suggested, or one operational centralised unit, like the UKHTC but with operational powers. In Germany, the Bundeskriminalamt (Federal Criminal Intelligence Service) officers, working on trafficking, focus on a particular nationality that further entrenches learnt specialism.

Good practice – United States (US) law enforcement trafficking taskforces

With a view to enhancing law enforcement capability to identify and prosecute trafficking locally, the US federal Government funded 42 multi-agency law enforcement task forces in a bid to bring together federal, county and local law enforcement stakeholders to engage in collaborative problem solving activities. A study reported that although the concept of multi-agency taskforces was relatively new, the participating law enforcement agencies were more likely to perceive trafficking as a problem in

²¹¹ European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*. (2012) [online]. Available at: www.ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf [last accessed March 2013].

their locality, have tailored training, protocols and specialised units of personnel devoted to trafficking investigations. This led to more cases identified, more arrests and more investigations resulting in twice as many charged at federal level than non-participating law enforcement agencies.²¹²

The other view claims that trafficking investigations should become part of core police business. In the UK, the latter view has been pursued, stating that trafficking investigations should be mainstreamed to become day-to-day policing. To assist this process, a network of single points of contact (SPOC) occupying senior ranks, have been appointed in 34 out of 43 police forces to direct information, and to coordinate and encourage activity within their respective organisations.²¹³ A prior network of SPOCs, developed by the UKHTC when it was first established, subsequently lapsed due to staff changes. To avert this loss in the future, staff change should be persistently monitored. Though the SPOC network is a step in the right direction, it appears that it needs to be rolled out across all forces. It was also stated that an agency handbook would assist in identifying SPOCs in other areas. The SPOC model should also be actively promoted among regional police forces as one participant stated that a number of cases of trafficked persons identified at a port had not been forwarded to the regional SPOC. It is also important to point out that while SPOCs are developing specialists, a team of investigating officers is required to investigate trafficking.

Though the ability and capacity to identify all types of trafficking needs to be conventional to all UK police personnel, participants stated that not all police are suited to investigating trafficking given that some investigations are complex and involve considerable challenges that are outlined in this report. One officer stated, *"[i]t's a round peg in a square hole, kind of thing. I think you've got to be the right type of person to deal with it and have some empathy with who you deal with."* Officers need to show aptitude in many different areas, the ability to think outside of normal constraints and possess both soft and hard police skills to liaise with vulnerable victims while dealing with hardened and organised criminals. The need for specialism is acknowledged in other complex areas of policing such as drug trafficking and fraud, which are managed in force by specialist squads; though it was recognised that police forces were moving away from specialism to cope with resource cuts.

There are some specialised units which have formed in the UK, such as the MPS SCO9 in London. Also in Scotland, Strathclyde Police established a Vice and Anti Trafficking Unit in 2009 and since March 2013 this has been operational for Police Scotland and renamed the National Human Trafficking Unit (see Chapter 10). Though it is acknowledged that there is a larger demographic in London, this unit is disproportionately responsible for more prosecutions²¹⁴ than other built up regions, thus suggesting that being given a mandate and resources to examine trafficking inherently develops policing in this area. Indeed, SCO9 are often called upon by police as well as NGOs in cases where the local police force is unwilling to investigate or take a statement from a potential trafficked person. The ATMG is also aware of small specialised units developing in some police forces who sit with their colleagues whose work, for example on forced marriage, traverses with trafficking.

Specialist units also have the potential to be cost-effective. If given a clear mandate and channels of communication from the frontline, they would reduce the number of low quality and lengthy investigations, particularly in relation to forced labour. Furthermore, their investigations would be planned and managed with financial investigators from the outset in order to ascertain traffickers' assets that could potentially finance the unit's future activities.

²¹² Farrell et al., *Understanding and Improving Law Enforcement Responses to Human Trafficking: Executive Summary*. (2008) [online] Available at: www.ncjrs.gov/pdffiles1/nij/grants/222752.pdf [last accessed March 2013].

²¹³ Mark Harper, HC Deb 17 Dec 2012, c498W.

²¹⁴ See numerous Hansard entries and NRM referral information.

Priority planning

A particular issue which all law enforcement interviewees presented as pivotal is that trafficking is a low priority policing area, despite the Government stating that its, "commitment to tackling human trafficking is clear and unequivocal".²¹⁵ It was stated by law enforcement participants that if the case is not large in scale or particularly horrific in its facts then it is not given priority. The Home Secretary sets annual national objectives and direct performance targets for police forces.²¹⁶ The priorities usually stem from areas that the public or the UK Government considers to be areas of concern - for example, high priorities relate to burglary, anti-social behaviour and disorder, vehicle crime, robbery and drug-related crime. In addition serious and organised crime is prioritised; however, human trafficking is not explicit under this category. Reflecting these national objectives are annual local police plans or control strategies together with local policing objectives.²¹⁷ As human trafficking is not a prescribed category, it is only reflected in a small number of local policing plans. One law enforcement interviewee stated:

"They would point at their strategic documents and say '... we have a priority in terms of serious and organised crime' which is true and, yes, of course, human trafficking falls under that but you can bet that most police forces are actually looking at other areas of serious organised criminality, drug running, gun running, etc."

Respondents discussed the strong police performance culture and the pressures from management to perform in priority areas which have dedicated resources. Statistics in effect were said to divert a lot of policing as figures were often pursued rather than crime reduction.²¹⁸ In 2011, during an unfair dismissal case made by a police officer against her employer,²¹⁹ one of the allegations put forward was that senior management concealed the scale of trafficking because they were concerned that trafficking investigations involved more resources and would leave them unable to meet crime detection targets. During the tribunal hearing, which was found in favour of the claimant, it was stated that this focus on measurable targets led to an incident in 2007 where the lives of two trafficked women were put in jeopardy. Though this incident occurred in 2007, this case highlights the adverse effect policing priorities can have on trafficking.

Respondents claim that if they had the backing from senior management, forces would be able to devote time and resources to trafficking investigations. One participant stated that if trafficking, including for forced criminality, was made a priority, this would decrease the number of petty crimes committed. Prosecuting a trafficker who may be forcing a group of trafficked persons to commit crimes will inevitably see such crimes decrease in areas the trafficker operates. Moreover, trafficking should be made a police priority as it may disadvantage UK businesses, undermines public services through tax evasion and puts pressure on health, judicial and welfare systems.

The introduction of the Police and Crime Commissioner (PCC) in 2012 is both an opportunity and a concern in setting trafficking as a policing priority. With the aim "[t]o provide stronger and more transparent accountability of the police, PCCs will be elected by the public to hold chief constables and the police force to account; effectively making the police answerable to the communities they serve."²²⁰ PCCs are responsible for setting local policing priorities but must have regard to those set by the Home Secretary. Whilst the PCC model offers lobbying opportunities to prioritise trafficking,

²¹⁵ HM Government, *Human Trafficking: The Government's Strategy* (July 2011), p.4.

²¹⁶ *Newburn, supra* note 168.

²¹⁷ *Ibid.*

²¹⁸ A recent example of such come from the MPS Southwark Sapphire Unit in south London whose officers "encouraged" victims to withdraw allegations to boost detection rates. See BBC News, 'Met rape unit encouraged woman to drop case against murderer' BBC News London 26 February 2013 [online]. Available at: www.bbc.co.uk/news/uk-england-london-21586786 [last accessed 23 April 2013].

²¹⁹ Jones, C., 'Sex-traffic case detective wins payout from force: Victory for the Detective in Whistle-Blower Tribunal' Western Mail (Cardiff, Wales) April 8, 2011.

²²⁰ Home Office, *Raising awareness and understanding of Police and Crime Commissioners: A handbook for police communicators* (August 2012), p.3. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/117510/communications-handbook.pdf [last accessed March 2013].

interviewees envisage the status quo being maintained as PCCs are elected on their ability to reduce crime. As trafficking is not currently prioritised and performance targets recorded against it, a sudden focus on trafficking may show an increase in organised crime in a particular region and may affect the PCC's re-election in the post.

Conclusion

The UK has a positive obligation to investigate trafficking. While several landmark cases were successfully investigated by the police, the UK's overall ability to respond to the problem of trafficking remains low. There is a stark contrast between the number of identified victims and the number of prosecutions of traffickers. The culture of policing targets means that trafficking is not considered a priority, which is compounded to date by a lack of specific trafficking training for investigators to understand the complexities of trafficking and its victims in the context of investigation. Currently investigations are dependent on the good will and perseverance of individual officers who understand the complexities of trafficking and its victims. It is well known that traffickers generate vast benefits from the exploitation of vulnerable individuals. In the climate of resource cuts, focused anti-trafficking operations can hit traffickers hard and seize their sizeable profits which in turn can be re-invested to sustain such operations as was the case in past drug operations. Where specialism was developed or specialist anti-trafficking units have been formed, trafficking has been tackled with greater success, therefore this approach must be considered.

Recommendations:

- **Incorporate a confidentiality waiver box to NRM referral forms and ensure UKBA regularly shares trafficker information and intelligence held on its files with the police.**
- **Reassess UKBA's Competent Authority role given perceived obstructions to investigating trafficking.**
- **Ensure that all investigators working on trafficking cases have undergone trafficking investigation training.**
- **Ensure the new investigator training package is gender sensitive and trauma-informed.**
- **Consider appointing a single named contact who can provide the victim with timely and comprehensive updates.**
- **Create and uphold memorandums of understanding between the police and service providers to agree information sharing protocols, working relationships, roles and responsibilities.**
- **Form and maintain specialist anti-trafficking units. A single specialist unit operational across England and Wales, similar to the Scottish model, should be considered.**
- **Trafficking shall be made a priority by making it a distinct category among policing targets set by the Home Secretary.**

Chapter 6: Multi-agency and international partnerships

This chapter explores the role of other enforcement agencies than the police in the fight against trafficking by firstly outlining the benefits of multi-agency working, followed by a discussion of the role and involvement of the main agencies in trafficking investigations. The chapter will then turn to the police's relationship with its international counterparts and highlights the necessity of collaboration where trafficking is transnational. European policing and justice measures will be considered, and in particular the Joint Investigation Team model is examined as an effective approach to dismantling trafficking networks.

Multi-agency cooperation

Whilst the police have a leading role in investigating trafficking, there are several government agencies that come into play when targeting trafficking networks. Service providers should also be included in multi-agency working acting as a bridge between police and trafficked persons. There was consensus among interviewed participants that multi-agency working was also a key element to successful prosecutions. Each agency or organisation has a different perspective and skill set, and when combined through coordination, it can achieve more than working in isolation. Further, where evidence to sustain a trafficking charge fails to materialise, discussions among agencies may reveal other disruptive interventions. In this regard the Cross-Sector Intelligence Sharing hubs coordinated by the Anti-Human Trafficking Coordinator in Wales have added value to efforts in the region. Stakeholders involved in these hubs stated that regular meetings driven by clear terms of reference had resulted in the development of relationships and trust building which allowed for the easier exchange of intelligence.

General coordinated operations involving governmental agencies appear to have been undertaken where senior managers were interested in the subject matter and where activities overlapped with the agencies' internal measurable performance targets. For instance, one interviewed participant referred to UKBA funded spot checks in nail bars, carried out jointly with HMRC and UKBA. However, checks were discontinued when UKBA did not obtain sufficient immigration offences.

Good practice - Operation Sharvor

Between 2010 and 2012, Operation Sharvor, an MPS led multi-agency operation involving HM Revenue & Customs, the Department of Work & Pensions, Vehicle and Operator Services Agency, UK Border Force, Europol and Interpol, investigated criminality on the international coach network entering the UK and terminating at London Victoria station. Later joint operations indicated that potential suspects were bypassing London for Derby, Sheffield and Bradford. The operation gathered intelligence on criminal networks facilitating trafficking into the UK by examining passenger manifests. The manifests were also examined for patterns of travel and names were cross referenced against other agencies' databases to ascertain suspicious claims.

The operation revealed that international coach travel is a cheap and unchecked entry/exit route into the UK and therefore should also be an area of focus. It also highlighted that trafficking, document offences and commodity smuggling, in addition to other criminal offences are facilitated using coach travel. Though there have been no prosecutions brought under the operation, it has been vital for intelligence building.

Information gathered for this report reveals a lack of a joined-up approach and information sharing, with many agencies working independently of one another. One law enforcement officer stated, *"it's painful to go to the DWP and all these other agencies to get information because they are all doing*

their own thing and people are scared to release anything". This in part is due to confidentiality rules that prohibit the release of information unless there is a prior memorandum of understanding. A request through the formal governmental gateway process needs to be made through an official form that goes through various stages. Therefore it is for the police to request information from agencies rather than agencies pass on information to the police in relation to suspicious activity. An officer may work on a case involving a particular suspect concurrently with another government agency also investigating this individual but have no knowledge of each others' involvement, thus hampering concerted efforts. Not only is there a lack of information sharing between agencies but also between the same agencies in different jurisdictions or even different departments within that agency. Such a lack of information sharing may inhibit the full intelligence picture to crystallise or unearth the full scale of the trafficking network's offending.

UK Human Trafficking Centre (UKHTC)

In addition to its Competent Authority role for EU-national NRM referrals, the UKHTC acts as a central repository of information and intelligence, and a conduit between national police and international bodies such as Europol and Interpol. UKHTC also has a small team of tactical advisers who provide around-the-clock advice on planning and management of trafficking operations across the whole of the UK. Advice may include evidence strategies, operational practice, victim care, and the NRM. Tactical advisers can also provide support at trial and this is available for any police force at any time, regardless of the team's involvement in the investigation. The UKHTC is engaged in developing good practice in trafficking investigations. Whilst participants stated that such tactical advice has added value to their cases (see below), the UKHTC's capacity is limited and it cannot task the police to investigate trafficking. The National Crime Agency (NCA) will become live in October and the UKHTC will sit within the NCA Operations Command.

Good practice – *R v Connors*²²¹

The cases were the second grouping of convictions under s.71 of the CJA in 2012/2013. The cases concerned three investigations by three different police forces which were linked to the same crime syndicate. These investigations were Operation Tundra (Gloucestershire), Netwing (Bedfordshire) and Helm (Hampshire). Netwing saw 23 male victims (British, Polish and Lithuanian) recovered from the Green acres site. They were kept in servitude and forced labour by the defendants who were Irish travelling families.

The victims were targeted because of their vulnerabilities, such as homelessness, unemployment and alcoholism, making them more malleable and whose disappearance was unlikely to raise an alarm or concern. The perpetrators targeted places with high densities of vulnerable people such as soup kitchens and homeless shelters. Victims were controlled using a mixture of physical force, threats, psychological coercion and emotional abuse. The exploiters also used victims with elevated status to oversee, manipulate and assault their peers in exchange for better treatment and conditions. Some of the victims remained in this situation for 15 years, others for just a few days. In many cases, the victims did not identify themselves as such, believing that they were indebted to their exploiters as they had curbed their alcoholism, and had been given purpose and structure in their lives.

Suspicious were first raised in early 2011, when a man who had been reported missing a year previously, was located in the company of the Connors. It transpired he had been and was still living at the Greenacres site. A few months later another man escaped when carrying out door-to-door

²²¹ The three cases are *R v John and Josie Connors* at Luton Crown Court, July 2012; *R v Connors and others* at Bristol Crown Court, 14 December 2012; and *R v William Connors and Connors* at Southampton Crown Court, 9 January 2013.

canvassing for tarmacking opportunities. Uniformed officers later attended the site where they were told that no offences had been committed and that the workers were there of their own accord. After Bedfordshire Police contacted the UKHTC, the tactical advisers were able to assist in Operation Netwing. The UKHTC coordinated police action and proposed the s.71 offence which had not been previously considered. An operation plan to gather evidence was devised in partnership with the UKHTC. Before action was executed at Greenacres (the main exploitation site) evidence was gathered using covert surveillance to document abuse as well as collecting statements from escaped victims. The CPS was involved early on and suggested that prior to the arrest day there was enough evidence to remand the suspects in custody. This was important in order to prevent intimidation of victims whilst awaiting trial.

As many victims were expected, the UKHTC implemented its Reception Centre model, utilising witness strategies and ABE interview policies. The Reception Centre is a controlled environment where victims are taken after raids for the purpose of victim identification, initial protection, needs assessment and evidence preservation. The UKHTC was able to advise on the suitability of the Centres with regard to security, and assisted the police in organising staffing utilising other agencies such as the Red Cross and The Salvation Army.

After initial resistance, some victims were ABE interviewed by police with support from SOCA officers in the Vulnerable Persons Team (VPT). The VPT assisted them with UKHTC knowledge i.e. interview planning etc., and were present during the interviews. The UKHTC also encouraged the police to commence a financial investigation from the beginning of the enquiry, which proved fruitful as £4 million was recovered thus remunerating investigation and court costs.

HM Revenue & Customs (HMRC)

The HMRC regulates the tax system, including national minimum wage, business rates, and administers tax credits. Trafficking networks may be investigated for fraudulently claiming tax credits or laundering money through legitimate businesses. Most of the HMRC's core business is carried out through online systems, call centres and spot checks. Where suspicious activity is identified, it is passed to the Criminal Investigation Directorate assigned to undertake investigations with a view to prosecution.

HMRC representatives also sit on the Scottish Tactical Tasking and Coordinating Group (STTCG) and link into crime mapping and regional crime groups. Until 2011, the HMRC was better able to identify suspicious cases, as applications for refunds and services had to be made in person. The move to online cost saving systems has made suspicious cases harder to identify.

HMRC and trafficking investigations

The HMRC was involved in a joint operation with the STTCG in 2009. Operation Tidwell/Mockday investigated organised tax credit fraud, after observing an increase in Slovak tax credit claims for large families. This resulted in the apprehension of Slovak and Czech nationals allegedly involved in sex and labour trafficking and tax credit fraud (also see Chapter 10).

Unfortunately, this case was indicted under fraud and assault offences because of the Supreme Court of the United Kingdom's judgement in *Cadder v HM Advocate*,²²² where it was held that not having

²²² *Cadder v HM Advocate* [2010] UKSC 43.

access to a solicitor prior to being interviewed by the police breached a defendant's rights under Article 6(1) of the ECHR. As the suspects in Operation Tidwell/Mockday were dealt with under the old regime this impacted upon the admissibility of evidence on trafficking obtained in such interviews thus making them inadmissible in court.

The HMRC was also involved in Operation Golf involving Romanian Roma children and forced begging, by assisting in charging the criminal network with fraudulent tax credit claims and restraining assets. This led to one of the suspects, Gheorghe Mihai, being convicted of fraud and money laundering as well as child cruelty.

Department of Work & Pensions (DWP)

The DWP is responsible for welfare policy and administers welfare benefits which can also be targeted by traffickers. The process of receiving benefits requires a person to go into a Jobcentre Plus office to claim and demonstrate eligibility. During these visits it was frequently observed by staff that enforcers were accompanying people claiming benefits. Intelligence may assist in the development of police knowledge on trafficking networks as benefit fraud has demonstrated links with trafficking. It was reported that there is a lack of proactive information sharing between DWP and the police, as one law enforcement officer stated: *"we've had trafficking in this house and there's been a report of benefit fraud" and then the DWP go "oh, yeah, there have been about 35 people on our records living at that property!"*

Good practice – DWP Hidden Economy Fraud Investigation

A DWP Fraud Investigator, tasked with investigating benefit fraud in the sex industry, inadvertently extended the scope of some police forces to identify trafficking for sexual exploitation. The initiative investigates persons who work in the sex industry and are claiming benefits. The Investigator works proactively by identifying sex workers through adverts etc. and conducting on-the-spot visits. Any situations which raise suspicions of trafficking are reported to the police working on exploitation and trafficking. The police and the Investigator also conduct joint investigations. Where exploitation is identified the police take the lead and vice versa where there is a benefit fraud issue. Experientially the Investigator has adopted a sensitive and non-judgemental interviewing style to respond to vulnerable persons. Through this non-threatening approach, the Investigator stated that they are able to build trust with sex workers and in turn gain information concerning suspicious circumstances that can then be forwarded to the police. Sex workers can be a good source of intelligence in locating other premises where exploitation may occur.

UK Border Agency (UKBA)

As of March 2012, some functions of the UKBA were assigned to the UK Border Force (UKBF). The UKBF is found at the UK border and its responsibilities include customs issues. UKBA retained its criminal and financial investigation teams, with responsibilities for both immigration and illegal commodities, such as drugs and firearms. UKBA have been involved in many joint trafficking investigations with the police. Seconded police officers are currently working to build UKBA capacity to effectively investigate trafficking. However, law enforcement officers interviewed for this report were unclear of the role of such investigation teams and questioned their experience and capability to investigate complex trafficking offences. One officer argued:

"[I]n all fairness the UKBA isn't up to the task of investigating anything of a serious level ... some of them don't even know they've got responsibility about the NRM ... they are not trained properly in investigation".

Despite this, it would appear that police frequently delegate responsibility for some trafficking investigations to UKBA investigation teams. As a result an approach has developed whereby trafficking cases with an immigration component are seen as UKBA territory. One participant stated,

“Unfortunately, it’s often a default for forces to go ‘well, its immigration’ and that’s what we’re trying to say it’s not, it’s nothing to do with immigration at all; its offences, it’s crime, it’s serious and organised crime. You [the police] need to deal with it.”

Gangmaster Licensing Authority (GLA)

Frequently cited as a good practice model, the GLA’s remit is to enforce both civil regulatory standards and criminal offences under the Gangmasters Licensing Act 2004. Such standards operate under a licensing regime regulating labour providers who supply workers (such as gangmasters and employment agencies) in the following narrow industries: agricultural, forestry, horticultural, shellfish gathering, food processing and packaging.

The GLA has been proactive in its approach in identifying situations of forced and exploitative labour. It creates profiles of potential high risk areas within the specific industries the GLA focuses on. Such cases are referred to the police or UKBA criminal investigation teams where necessary. This proactive “on the ground” intelligence-led, risk-based approach enables the GLA to accumulate expert knowledge on the modus operandi of trafficking networks operating in the above industries. For instance it uncovered techniques to manipulate the posted workers scheme to circumvent the rules on A2 restrictions to 20,250 ceiling under the Home Office seasonal agricultural workers’ scheme.

During 2011 it was reported that the GLA identified 845 exploited workers and successfully prosecuted 12 cases against gangmasters for operating without a licence.²²³ In 2012, the GLA was involved in 87 criminal investigations which is a marked increase on previous years.²²⁴

International partnerships

Trafficking can be transnational in nature with networks spanning several countries or continents. As stated above, to truly impede and dismantle trafficking networks, suspects, evidence and assets need to be traced across borders. The procedural requirement for international cooperation is stipulated in Article 32 of the Convention which states that Parties shall cooperate during investigations and criminal proceedings, through the “application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible.” Information requests must be responded to without delay and expeditiously, including negative responses where the action cannot be carried out or likely to cause significant delay. This also includes forwarding information to another Party, without its prior request, if it may assist in initiating an investigation or sustaining a current one.

Within the European Union there is an array of tools within European policing and justice measures that assist in investigating trafficking. They simplify the procedures of otherwise lengthy mutual legal assistance (see below). These include the European Arrest Warrant, Joint Investigation Teams (JITs) as well as technical assistance and resources available through Europol and Eurojust. However, there are many operational barriers to fulfilling these obligations and utilising such measures. Police must surmount the hurdles not only of language barriers, but also issues related to specific country contexts such as legal, political and cultural customs. Furthermore, such working is limited because “the core components of that response (laws, law enforcement agencies, prosecution services and the courts), are typically structured and generally only operate within the confines of national borders.”²²⁵

²²³ Jowit, J., ‘Gangmasters watchdog told to cut ‘red tape’ The Guardian, Monday 5 March 2012 [online]. Available at: www.guardian.co.uk/law/2012/mar/05/gangmasters-watchdog-defra-licensing-authority [last accessed 25 March 2013]

²²⁴ All-Party Parliamentary Group on Human Trafficking, *Paul Broadbent, Chief Executive Gangmasters Licensing Authority*. Event held at House of Commons on Monday 25th March.

²²⁵ *Gallagher, supra* note 159, p.404.

It was reported that few police forces work with their international colleagues when it comes to trafficking investigations, preferring to work in isolation. Only a few of the more specialised police units have initiated joint investigation teams (see below). Even the simplest of joint working has proved difficult.

In one case, reported by a service provider, a trafficked woman was first trafficked to France and then later to the UK. While in France the trafficked woman had come into contact with the French police and given detailed statements against her traffickers. Once in the UK the woman escaped her trafficker and went to the British police. The trafficked woman feared repercussions due to the statements made in France and wished to know if the French police had taken any action. She requested that the British police contact the French police to obtain this information. It was only after the service provider suggested contacting the assigned officer's manager, that the request was made. The French police responded quickly stating that the traffickers were prosecuted and had been imprisoned.

In addition, it was reported that police underutilised assistance offered by Europol. Yet, officers who had "washed" their information against that held by Europol (i.e. if Europol holds any intelligence on the case the police are working on) gained positive hits which assisted them in their investigations. Furthermore, as evidenced by some of the cases in Annex II, international cooperation has proven successful. In particular, the European Arrest Warrant (EAW) has been utilised to extradite ten traffickers²²⁶ to the UK including the likes of Marcel Vasile who fled to Spain.²²⁷

Many participants presented JITs as an effective tool in dismantling trafficking networks. JITs are established through agreements between two or more police forces in EU member states that work together on a specific case and over a fixed period of time. Non-EU countries may participate in a JIT with the agreement of all other parties. The ease of information sharing through the JIT agreement can reduce or eliminate the need for mutual legal assistance and speed up the process leading to efficient and time saving investigations. Furthermore, JITs allow for the posting of foreign officers in the UK (or vice versa), where they can operate with the same powers as the local police if the JIT leader permits this.²²⁸ The JIT process is managed by Eurojust and Europol: Eurojust can provide financial and logistic support for operational activities; and Europol can contribute to the drafting of JIT agreements. It can also arrange and help with the evaluation and lessons learnt after a JIT has come to a close. Eurojust can support JITs by reimbursing costs relating to travel, accommodation, translation and interpretation. The Metropolitan Police Service has run several successful JITs with Poland, Bulgaria, Romania and the Czech Republic (see Operation Golf in Chapter 6). The use of JITs for cross border trafficking operations is, however, underutilised elsewhere in the UK.

Whilst EU funding is important in an environment of resource cuts, there also appears to be a lack of understanding on what funding is available and how to apply. In addition to JIT funding, the European Commission's Prevention of and Fight against Crime (ISEC) programme has a budget which funds law enforcement projects to prevent and combat crime including trafficking. When there is a call for general proposals any organisation can apply after they are registered, or proposals are accepted from established framework partners which provide for long-term cooperation between the Commission and public bodies.

²²⁶ Mark Harper, HC Deb 19 Nov 2012, c243W.

²²⁷ Cox, C., 'Man extradited from Spain to face trafficking charges due in court' Manchester Evening News 12 December 2012. Available at: <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/man-extradited-from-spain-to-face-trafficking-698937> [last accessed 22 March 2013].

²²⁸ Article 1 (6) of the Council of European Union Framework decision of 13 June 2002 on Joint Investigation Teams (2002/465/JHA)

Good practice – Operation Golf²²⁹

Operation Golf was established in April 2007 and was the UK's first JIT focusing on human trafficking. 70% of its activities were subsidised by the EC's ISEC fund. It was initiated after a significant rise was identified in theft and pickpocketing crimes committed by Romanian children in the London Borough of Westminster. This was later ascertained as a particular Romanian Roma crime syndicate trafficking children to commit those crimes. Because of the breadth of the criminal activities spanning both Romania and the UK, and transnational trafficking networks are more difficult to prosecute, it was decided that a JIT was warranted between the MPS and the Romanian National Police (RNP). Golf adopted a root and branch approach to dismantling the whole trafficking network. Whilst the MPS focused on lower level network members operating in the UK, the RNP tackled the main traffickers who were resident in their jurisdiction. Golf concluded in December 2010 with 80% of the UK-based gang members imprisoned for a variety of offences such as money laundering, benefit fraud and forgery.

The RNP investigation was strengthened by the support of MPS officers who with full investigative and search powers assisted the RNP's enquiries. The RNP's investigation resulted in 18 people arrested, and a substantial amount of weapons, gold, money and property seized which belonged to the criminal gang. The prosecution of the Romanian-based criminal members is ongoing. The use of the JIT model assisted in overcoming the evidential format required for each of the respective countries' courts. Furthermore, prosecuting the main traffickers in Romania, rather than extraditing them to the UK, was a strategic decision as the maximum sentence for trafficking is higher in Romania (20 years' imprisonment), and the Romanian CJS is known to impose harsher sentences than the UK.

Outside of JITs, the police are also able to gain information, to a lesser degree, through mutual legal assistance. These are formal requests to other countries for information and evidence to be used in investigations and prosecutions. The formal process allows for foreign evidence to be used in UK courts. Mutual legal assistance channels are usually created through bilateral or multilateral treaties with participating countries. However, such requests can be a particularly long and bureaucratic process where it is not uncommon for such requests to go missing or arrive after the trial has concluded. Therefore they are not seen as the most efficient way of sharing information.

Certain countries are more responsive than others. But some of the top source countries, such as Nigeria, are unresponsive, thus further complicating the prosecution of Nigerian traffickers. Indeed, the majority of Nigerian trafficking cases convicted involved one defendant at the end of the trafficking chain. A more effective way of obtaining information is by way of informal cooperation with individual officers sharing intelligence and exchanging evidence. This process runs parallel to mutual legal assistance requests but was reported as a swifter way to gain information.

Though the European Arrest Warrant and other measures have assisted in prosecuting trafficking, currently an opt-out of the scheme is being considered by the Government as part of a larger review which will take effect in 2014. The ATMG is concerned that this may significantly impede the UK's ability to effectively combat trafficking, delaying justice for trafficked persons and perpetuating traffickers' impunity. Added to that, Article 31.3 of the Convention requires Parties who fail to extradite an alleged offender, solely on the basis of their nationality, must nevertheless establish jurisdiction and prosecute offences referred to in the Convention.

²²⁹ Gravett, B & Carswell, C., 'Operation Golf: a UK and Romania Joint Investigation Tackling Romanian Organised Crime and Child Trafficking' in the *Trafficking Handbook*, *supra* note 44.

Conclusion

The demonstrated value of multi and international partnerships underscores the importance of agency cooperation. Each agency's input can open up avenues to detect and prosecute traffickers or cement evidence in established investigations. However, such working has not been mainstreamed into police action against trafficking with many agencies working in isolation. This is compounded by a lack of agency training to identify trafficking indicators on files held; and further frustrated by a lack of sharing information between and within agencies. While European policing and justice measures have proved particularly successful in dismantling transnational trafficking networks, they are underutilised. By the same token, the effective tools and resources available from the EU should be promoted rather than put at risk.

Recommendations

- **Promote the sharing of intelligence on trafficking between all governmental agencies.**
- **Promote the JIT model amongst police forces and explore EU funding channels.**
- **The UK should not undertake the "2014 Opt-Out" and keep the EU policing and justice measures in place uninterrupted.**

Chapter 7: Criminal proceedings

The Convention and Directive require specific provisions relating to criminal proceedings. These include special measures that place trafficked persons' needs at the centre of the trial;²³⁰ provisions for the seizure and confiscation of traffickers' assets;²³¹ requirements for sentencing including aggravating factors,²³² and powers relating to imposing sanctions on legal persons.²³³ These obligations were created to improve the effectiveness of prosecutions, to increase the chance of a conviction and to ensure that sentences act as a significant deterrent to others.

According to MoJ statistics, the UK appears to have a low conviction rate for trafficking offences where it is the principal offence on the indictment. This rate has steadily decreased over the years to a success rate of only 7% in sex trafficking cases and 0% in labour trafficking in 2011 (for a full discussion of conviction statistics under other offences see Chapter 3). This chapter discusses the various reasons why this may be the case although it is difficult to assess how much weight can be given to any one of these issues. Such issues range from a lack of knowledge on trafficking and its complexities amongst legal practitioners, judges and the jury; a lack of a victim-centred approach during criminal proceedings, particularly in labour trafficking cases whose victims generally receive less protection than those who are sexually exploited; and current sentencing guidelines pertain solely to sexual exploitation, and feature a large sentencing range including cases where there is no coercion etc., leading to inconsistent and inadequate sentencing.

This chapter discusses:

- The role of:
 - The CPS in charging and case building;
 - Prosecuting advocates and capacity to prosecute trafficking;
 - Judges and juries;
- Sentencing;
- Complexities of trafficking trials including witness protection; and
- Compensation.

Crown Prosecution Service (CPS)

The CPS is the main body in England and Wales which prosecutes criminal cases. CPS lawyers, (known as *Crown Prosecutors*)²³⁴ review, advise and take charging decisions based on a two stage test: (i) the evidential test²³⁵ followed by (ii) the public interest test.²³⁶ At either stage they have the power to discontinue a prosecution if there is insufficient or poor quality evidence. If a victim is not willing to testify and there is no other significant evidence, the CPS may decide not to prosecute on evidential grounds as the likelihood of success diminishes. The CPS has 42 Areas across England and Wales (with a 43rd virtual "CPS Direct", which offers out-of-hours charging advice to the police), divided into 15 regional Groups. These regional offices are given a considerable degree of autonomy resulting in each office developing its own particular approach that reflects local contexts and their relationship with regional police forces. Within these 15 regional Groups there is a Complex Casework Unit (CCU) where Special Casework Teams (SCT) are located. SCTs are assigned to particular cases

²³⁰ See *European Convention*, *supra* note 15, Article 30– Court proceedings, and Article 12 of the Directive – Protection of victims of trafficking in human beings in criminal investigation and proceedings.

²³¹ *European Convention*, *supra* note 15, and the *EU Directive*, *supra* note 16, Article 7.

²³² *Ibid.*, Article 24 of the Convention and Article 4 of the Directive.

²³³ *Ibid.*, Article 23 of the Convention and Article 4(4) of the Directive.

²³⁴ Crown prosecutors are all legally qualified barristers or solicitors.

²³⁵ Crown Prosecutors must be satisfied that there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge. They must consider whether the evidence can be used and is reliable. They must also consider what the defence case may be and how that is likely to affect the prosecution case.

²³⁶ Such "public interest" factors include but are not exhaustive: the offence was carried out by a group; the victim was in a vulnerable situation and the suspect(s) took advantage of this; a conviction is likely to result in a significant sentence; a prosecution would have a significant positive impact on maintaining community confidence; the offence was premeditated; there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this.

to advise and guide police on a range of complex and major investigations.²³⁷ However, some CCUs only manage large-scale organised trafficking cases.

As with law enforcement, the way the CPS deals with trafficking varies from area to area. Examples of good practice reported to the ATMG resulted in two landmark cases: *R v Anthony Harrison*²³⁸ and *R v James and Josie Connors*,²³⁹ where CPS lawyers understood the issue and the trafficking legislation to build the cases robustly. Furthermore, some police forces, particularly those experienced in trafficking investigations, have forged strong working relationships and direct communication channels with CPS casework lawyers experienced in trafficking cases which assisted in securing convictions.

Elsewhere, police voiced concerns that trafficking case files were not always referred to CPS lawyers who had the requisite experience and knowledge on trafficking. One law enforcement officer stated:

“We were getting people that didn’t understand [the trafficking] legislation and they just wanted to charge with controlling prostitution ... They just go for the easy option...”

Inexperience may hamper the use of trafficking legislation in favour of less complex offences that are easier to prove. The overall low conviction rate may also impact upon the decision whether to pursue trafficking offences. In this regard combining trafficking offences into one single comprehensive Act as outlined in Chapter 2, may assist prosecutors to better understand trafficking, especially where there is multiple exploitation and an overlapping of trafficking offences. Insufficient resources and heavy caseloads were also stated as factors that led to limited time to scrutinise complex cases or resources allotted to case files. The CPS has also been affected by a 25% budget reduction owing to government cuts.²⁴⁰

Specialist and experienced CPS lawyers were said to be key to developing prosecutions under trafficking legislation. One law enforcement officer stated:

“Unless you’ve got a prosecutor in a regional area who’s the expert and it gets to the [Complex Casework Unit] caseworkers, and it doesn’t get [held by] the frontline prosecutor who deals with the everyday cases of shoplifting and ABH in the street, if it gets beyond that layer to the complex case worker we’ve got more chance of drawing the links”.

Research participants stated that specialism is warranted in trafficking cases, as a generalist would not have the required knowledge of legislation, the types of evidence needed and ability to develop and maintain a strong working relationship with the police.

The 2010 case of *R v Vasile Oaches, Vasile Maris & Gheorghe Mihali*²⁴¹ demonstrates the requirement for prerequisite CPS lawyer knowledge and experience on building trafficking cases. The case involved Romanian trafficked women who were lured to the UK with the prospect of decent employment. Once in the UK they were required to work as street prostitutes and the defendants took their earnings. The women were slapped and threatened by Vasile Oaches. They were also required to have sex with the defendants’ friends in lieu of payment for rent. One of the women finally escaped with the help of another man she knew from Romania.

²³⁷ Including investigations on trafficking, organised crime, serious drug offences, historical cases, assisted suicide, major public disorder offences, serious or complex misconduct by police officers, major child abuse, animal rights extremism and major media interest cases.

²³⁸ *Anthony Harrison*, *supra* note 178.

²³⁹ *Connors*, *supra* note 50.

²⁴⁰ Travis, A., ‘Budget cut of 25% will ‘deny justice’, warns Crown Prosecution Service’ *The Guardian*, Wednesday 14 July 2010. Available at: <http://www.guardian.co.uk/law/2010/jul/14/cps-budget-cut-justice-warning> [last accessed 23 March 2013].

²⁴¹ *R v Oaches and others* at Croydon Crown Court, 26 May 2010.

Law enforcement working on the case stated that they wanted it to be reviewed by the SCT; however, a general CPS casework lawyer decided that they could manage the case effectively. However, this resulted in evidence of a gun was used against the victims to achieve their compliance being omitted from the evidence in the case file.

In turn the initial sentences imposed on Vasile Oaches and Vasile Maris were 30 and 24 months' imprisonment respectively. The CPS initially did not want to appeal these two defendants' sentences on the basis of them being unduly lenient. The service provider supporting the women funded the trafficked women's application to the Attorney General and the Court of Appeal increased the sentences to four and three years respectively.²⁴² For some these amended sentences may be viewed as still too lenient given the case facts. This demonstrates that knowledge and experience of trafficking within the CPS is essential for appropriate sentences to be imposed on traffickers.

It was noted that police forces working on trafficking within a specialist crime directorate were more likely to have access to specialists in the CPS. The ATMG was made aware that in some CPS areas a designated trafficking specialist sits within the SCT. Many participants stated that joint working between the police and the assigned specialist CPS lawyers at the early stages of investigations was crucial in sustaining trafficking prosecutions. Direct and frequent contact between the agencies made for efficient case building where lines of enquiry, evidence collection and a charging strategy can be discussed. The below case example shows the success of this approach.

Good practice - *R v Hassan and others*²⁴³

In 2012 a case of internal trafficking in Rochdale made the media headlines. Nine defendants were found guilty of numerous offences, including internally trafficking British girls, and were sentenced to between four and 19 years' imprisonment. Although ultimately a landmark case, it evolved from a false start as allegations of abuse made in 2008 were not fully investigated by Manchester Police. Furthermore, no social worker was allocated to the case; there was an 11-month delay in forwarding the file to the CPS; and there was a "refused charge" entered by the CPS on the basis that the victim lacked credibility to be a witness, issues with forensic evidence, cost and police officer workload, which led to delays.²⁴⁴

When new victims came forward, fresh proactive investigations were initiated. Around that time, a prosecutor who had experience of prosecuting trafficking was transferred to the CPS North West area. The police and SCT reviewed the original file and new evidence, together with the fresh input from the prosecutor. This led to the "refused charge" decision being reversed. A strategy for building the case was discussed, reviewing the evidence, agreeing potential charging decisions, and CPS input into interviewing the victims and suspects, pre-empting the questions the jury would inevitably ask. Furthermore, victims received tailored care, including access to psychologists, in order for the best possible evidence to be obtained for the criminal proceedings.

With the experienced prosecutor in the team they were able to suggest s.58 of the SOA as a possible charge, based on movement of victims to places of exploitation by taxis driven by criminal network members. This constituted one charge on the indictment that had not been previously considered,

²⁴² GOV.UK, 'Announcement: Sentences examined by the Attorney General in 2010' [online]. Available at: <https://www.gov.uk/government/news/sentences-examined-by-the-attorney-general-in-2010> [last accessed March 2013]

²⁴³ *R v Hassan and others* at Liverpool Crown Court, 9 May 2012

²⁴⁴ The Rochdale Borough Safeguarding Children Board, *Review of Multi-agency Responses to the Sexual Exploitation of Children* (2012). Available at: <http://www.rbscb.org/CSEReport.pdf>.

together with more established offences of rape, sexual activity with a child, and sexual assault. It was noted by someone involved in the case that Rochdale was “a classic case of the difference between partnership working and working the way we used to, i.e. police prepare a file, give you a file and you make a judgment rather than we work together on something, build a strong case and then make judgments. So, one produces a successful outcome, the other one denied justice.”

CPS training

To fulfil the obligation set out in Article 9 of the Directive, States must take “necessary measures ... to ensure that persons, units or services responsible for investigating or prosecuting the offences ... are trained accordingly”. Currently there is no trafficking training for general CPS staff. The last nationwide CPS trafficking training was conducted in 2007 as part of preparation for Operation Pentameter II, where two prosecutors from each of the CPS regional Groups attended multi-agency training. Some training has taken place where high-profile cases were successful but this tends to be on a small scale and carried out in an ad-hoc fashion. It is important that any inter-organisational knowledge and experience is passed on in the event that specialists move on. One law enforcement officer remarked, “the two people that we did look to as experts in the CPS have moved on and now nobody wants it, it’s like a hot potato.”

A national mandatory training program should be introduced for all CPS lawyers. This would address the current low levels of awareness among CPS lawyers who misidentify trafficked persons as offenders and prosecute them (see Chapter 8), or the loss of knowledge when experienced prosecutors move on. As one participant stated “the ideas are there [in CPS guidance and protocols] but they’re not there because they’re not getting down to the shop floor”. National training would also benefit SCT lawyers as they are in fact specialists of many areas rather than one specific issue. This would elevate understanding in each CPS area and bring about consistent knowledge levels across the CPS. There is a view that widespread CPS training is unjustified given public spending cuts because “its still a drop in the ocean compared to other work ... some of them may never see a trafficking case pass their desk in their whole lives”. However, to avoid the situation presented in *R v Vasile Oaches, Vasile Maris & Gheorghe Mihali*, training must be rolled out to all who work on trafficking cases.

The ATMG was made aware of one CPS area that had undergone in-house trafficking training on general awareness and how to build trafficking cases. The content of the training was developed by the Chief Crown Prosecutor, who undertook their own research and then imparted their learning to CPS managers in a train-the-trainer seminar. The managers then cascaded this knowledge to their staff. This form of training offers a good value for money approach. At the time of publishing, the ATMG was also informed that a new virtual training package entitled *Human Trafficking and Slavery E-learning* is under development at Prosecution College. The course is not compulsory for all CPS lawyers except for prosecutors involved in or assigned to trafficking cases, which may rectify the above. To fulfil its obligations, CPS lawyers who manage trafficking cases must undergo this training without delay. These lawyers should strictly be members of a SCT to ensure the complexities are fully understood.

Prosecuting Advocates

CPS lawyers are not all eligible to present²⁴⁵ cases in higher courts such as the Crown Court and in those circumstances they rely on prosecuting advocates who are barristers. It was reported that knowledge of trafficking also differed across barristers. However, the CPS repeatedly instructs barristers who successfully prosecute trafficking cases in some areas. The complexities inherent in

²⁴⁵ The ability to present cases in court is called “rights of audience”.

trafficking require particular understanding to effectively present the case at court. An interviewed judge stated:

"[Anyone] can prosecute an offence of violence but to deal with trafficking and sex is difficult. Only by specialist training are we going to get people to understand what goes through a victim's mind and that requires a specialism."

Article 9 of the Directive can be read to also include prosecuting barristers. Experienced barristers interviewed for this research saw the benefit of training on good practice in presenting trafficking cases at court; however, there is no formal training available for such barristers at present.

Experienced barristers also reiterated the need for an early multi-agency approach through case conferences to craft the presentation of the case together and to better understand the case particulars. Some barristers saw the value in involving support providers in such case conferences to gain better understanding of the trafficked person in order to present the case more effectively. Reports written on trafficked persons by support providers may aid prosecuting barristers in understanding the victim's mind and needs better.

Many participants presented the good practice of "rape-ticked" or rape-accredited barristers, where such barristers can only prosecute rape offences after attending a CPS accredited course. Such accreditation also requires the barrister to attend yearly update training and demonstrate the right skills.²⁴⁶ There are set procedures when working with rape victims, including pre-trial interviews. Indeed many of the successful trafficking for sexual exploitation cases were prosecuted by rape accredited barristers. However, such selection is not utilised when prosecuting labour trafficking cases. The existing rape accredited schemes could be adopted for all trafficking cases, or a small number of barristers in different regions could be trained and stringently instructed by the CPS, to avoid poor quality presentations. It may be argued that such an approach is not warranted given the numbers of trafficking prosecutions. However, with the rising number of identified victims of trafficking, the need to improve prosecution and conviction rates is pressing.

Judges

Interviewed participants reported a great variation in the way judges approach trafficking cases. A recently retired judge remarked that across the judiciary there is little knowledge about trafficking. Others stated that this may be due to the fact that certain areas have a higher rate of prosecutions being brought, for example in London. This lack of understanding, together with the fact that there has been little judicial training, may be affecting conviction rates, particularly when it comes to the judge's summing up. While it is impossible to know the reasons for a jury returning a certain verdict, a reasonable assumption is that the judge's explanation of the case can affect their decision.

It was reported by interviewed stakeholders that when the Convention was enacted in 2009, there were several cases involving trafficking for sexual exploitation, where judges took the view that as the victims had been prostitutes before they entered the UK, they would not have had to have been coerced into prostitution in the UK, and therefore they would not be considered to have been trafficked. Therefore judges reasoned that prosecutions should have been brought for prostitution-related offences rather than trafficking. This is based on a misconception of the definition of trafficking where the status of the person before she/he is trafficked is relevant.

In labour trafficking trials such misconceptions also exist, as was evident in *R v SK* in 2011.²⁴⁷ The case concerned domestic servitude in which the initial jury convicted SK of an offence under s.71 of the CJA. SK was accused of bringing an African woman to the UK to work as SK's domestic worker. It

²⁴⁶ CPS, *Rape and Sexual Offences: Chapter 16: Briefing & Monitoring the Advocate* [online]. Available at: http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/briefing_and_monitoring_the_advocate/ [last accessed March 2013].

²⁴⁷ *R v SK* [2011] EWCA Crim 1691.

was also alleged that the woman was effectively housebound over a three-year period and was made to sleep on the kitchen floor. *SK* later appealed the conviction on the grounds that the Crown Court Judge erred in applying the “novel offence” contained within s.71 of the CJA, namely in the wrongful explanation to the jury of the concepts (slavery and servitude) within the ambit of Article 4 of the ECHR. Mr Justice Lindblom held that “[i]n describing the ingredients of the offence the judge did not identify and explain the relevant core elements of Article 4. In our judgment, he focused too much on the economics of the relationship between the appellant and the complainant, thus diluting the test the jury had to apply to one appropriate to an employment law context but not strong enough to establish guilt of the criminal offence with which the appellant was charged.”²⁴⁸

Furthermore, Justice Lindblom found that the definition of slavery given by the trial judge was insufficient for the jury to understand i.e. that slavery consisted of using a person as an object - like a chattel or property, which in isolation would not suffice for the purpose of the definition in Article 4 of the ECHR. Since the initial trial judge had not properly directed the jury in relation to the elements of the offence, the conviction could not be safe. It was quashed and a re-trial ordered at which *SK* was acquitted. It is important to note that this was the first time a case was brought under the new legislation and, as with any new piece of legislation, elements in the definition of the offence will be open to interpretation and therefore training needs to be given to avoid such situations from occurring in the future.

Good practice *R v Khan*²⁴⁹

The judgement in the case of *R v Khan* shows excellent understanding of the complexities of trafficking. In particular, this case provides guidance that victims of labour trafficking can be controlled through sophisticated methods of psychological manipulation. In this case, the trafficked persons travelled to renew their visas in Pakistan and returned to the exploitative situation on the promise of improved working conditions. Lord Justice Pitchford held that, “the return of the workers does not constitute evidence that the conditions to which the workers were subjected were acceptable but, in the circumstances of the present case, is evidence of further exploitation by the offenders of personal circumstances of which they knew they could take advantage”.²⁵⁰

Currently there is no specific training on trafficking for the judiciary by the Judicial College (JC).²⁵¹ It was suggested that resident judges in some Crown Courts carry out periodic reviews of the types of cases frequently heard in their courtrooms. If a particular trend is noted they may ask outside specialists to conduct specific in-house training. However, this could not be verified with respect to trafficking. Yet training for judges is seen as beneficial to trafficking cases. A judge stated:

“[Trafficking] needs to be a specific issue for those judges who are sitting in those kind of courts where trafficking is a commonplace ... it requires the same [judicial] skills as a sex case, because you have to understand the mind of the victim”.

Interviewed participants cited the example of the *rape-ticketing* scheme which allows judges to preside in rape trials. Such judges undergo specialist and continuous training. Therefore such a scheme should be considered for trafficking trials so that judges have the increased ability to adjudicate in these cases.

²⁴⁸ *Ibid.*, para. 44.

²⁴⁹ *R v Khan* [2010] EWCA Crim 2880. The three defendants in this case were convicted under s.4 of the AI(TC)A.

²⁵⁰ *Ibid.*, para.18.

²⁵¹ The Judicial College runs a series of seminars outlined in the Courts Judiciary Prospectus for continued education and specialist training via a mixture of residential and non-residential seminars supplemented by e-learning. Within the Prospectus' for April 2012 to March 2013 and April 2013 to March 2014, trafficking is omitted.

Jury

Practitioners suggested that the low conviction rate under trafficking legislation may, in part, be due to the jurors' lack of familiarity with the existence of human trafficking. Indeed coercion methods such as traumatic bonding or CPTSD are "still 'beyond the keen' of the average jury member".²⁵² A high number of hung juries were reported in trafficking trials i.e. the jury were unable to reach a verdict due to a complete division in opinion. While it is difficult to ascertain why hung juries occur, this may be down to a lack of understanding of trafficking as a concept, the trafficking legislation or the evidence presented. A legal practitioner observed: "*Most of what juries deal with is broadly within their experience ... whereas, [trafficking] is very much outside of a juries' experience*".

In spite of this, skilled and experienced prosecuting barristers agreed that this could be effectively explained to the jury. Another legal practitioner stated:

"[I]t's our job to get them to understand it and to appreciate they [the victim] didn't really have any choice and they were totally in their [trafficker's] control and there were these consequences [denunciation to the authorities etc.] that will flow if they decided to live a different life, or choose to report it to the police."

Therefore a prosecutor who understands the complexities of trafficking and the impact on the victim, and can explain this to the jury, is indispensable to a successful prosecution.

Furthermore, the use of expert witnesses has also proved important to prosecutors in aiding the jury's understanding of trafficking, particularly where added complexities, such as Juju (discussed in Chapter 1), arise. In 2011, an expert on cultural practices of Juju was used for the first time in *R v Anthony Harrison* to explain a concept which was alien to many UK nationals. The information presented by the expert assisted the jury in understanding the behaviour of trafficked children in this case. Similarly, a cultural expert was utilised in *R v Osezua Elvis Osolase*.²⁵³ Both cases were successful, with both attracting landmark convictions of 20 years' imprisonment. It appears that the use of experts greatly assisted the juries' ability to understand complex relationships between trafficker and victim as well as the cultural contexts within the cases.

Sentencing

Articles 23, 24 and 25 of the Convention pertain to sanctions regimes for trafficking offences. Article 23 ensures that penalties imposed on traffickers are "punishable by effective, proportionate and dissuasive sanctions including penalties involving deprivation of liberty which can result in extradition." This provision is echoed in Article 4.4 of the Directive, which aims to further strengthen States' obligations by stating that they "shall take the necessary measures to ensure [trafficking offences are] punishable by a maximum penalty of at least five years of imprisonment."

What is deemed effective, proportionate and dissuasive can therefore be influenced by the country context in which they operate. In determining the length of sentence certain factors are to be regarded as aggravating circumstances: (a) the trafficker deliberately or by gross negligence endangered the life of the victim; (b) the victim was a child; (c) involved a public official in the performance of their duties; and (d) involved criminal organised groups. The Directive includes additional factors: (e) which includes threats to cause serious violence or where it was caused; and extends factor (b) to include victims who were particularly vulnerable whilst omitting factor (c). The Directive goes further than the Convention by stipulating maximum sentences of at least 10 years' imprisonment where any of the Directive's aggravating factors are present in the case.

The punishment regime under the SOA, AI(TC)A, and CJA all attract a maximum penalty of 14 years' imprisonment. In comparison the UK in theory does better than most EU countries. However, there

²⁵² Korzinski, *supra* note 44 p.80. Also see Ewing, P, & Aubery, M 'Battered women and public opinion: Some realities about the myth' *Journal of Family Violence* (1987), Vol.2, pp.257-264.

²⁵³ *R v Osezua Elvis Osolase* at Canterbury Crown Court, 29 October 2012.

are ten countries with *potentially* higher maximum sentences including: Belgium (20 years), Cyprus (20 years), Czech Republic (18 years), France (20 Years), Hungary (life imprisonment), Ireland (life imprisonment), Italy (20 years), the Netherlands (18 years), Romania (25 years) and Slovakia (25 years). Also just over half of the EU countries set minimum sentences which is higher than the six months in the UK. Therefore, it can be argued, that the current sentencing framework complies with the Convention, as it correlates well to most countries and the Directive, and it exceeds the prescribed maximum sentences i.e. 14 years as opposed to 10 years maximum sentence. However, some participants questioned whether a maximum of 14 years' imprisonment reflected the true seriousness of trafficking as an offence when rape and Class A drug trafficking offences attract life imprisonment. Indeed, it was reported that between 2006 and 2010, "the average determinate custodial sentence length for trafficking for sexual exploitation was 50 months; in the case of trafficking for forced labour, it was 51 months, and in the case of drug trafficking, it was 73.5 months."²⁵⁴

In practice, the actual sentences imposed for trafficking offences rarely reflect the maximum sentence of 14 years' imprisonment in the UK. One judge explained the difference between the potential maximum sentence and sentences imposed:

"[I]n theory [sentences as prescribed in legislation] are effective, proportionate and dissuasive because the statute accepts this, but the [sentencing guidelines] are so wide it is matter for judicial discretion, in practice none of those [effective, proportionate and dissuasive] are true".

Annex II provides an overview of trafficking prosecutions and convictions since 2009 until early 2013. While there is no consistency shown across the board, the table shows that longer sentences result from guilty verdicts passed on a number of serious offences on the indictment, and where sentences are imposed consecutively.²⁵⁵ Despite this there have been cases where trafficking alone or when coupled with prostitution-related offences resulted in sentences reaching around double figures. In particular, see sentences imposed on: 2009 - Tafil Kadria (13 years) and Xhevdet Cikaj (12 years); 2010 - Martin Bruschi (8 years) and Dusan Horvat (8 years); 2010 - Jozsef Budai (8 years) and Andrea Novak (8 years); 2011 Bogdan Nejlloveanu (9 years); 2011 - Sergey Konart (10 years); 2012 - Ionut Daniel Nicolae (10.5 years) and Vasilica Cosmina Tirei (9 years). Several cases were referred to the Court of Appeal by the Attorney General under the unduly lenient sentencing regime indicating that, as the initial sentences were low, some judges' approach to sentencing traffickers is inappropriate and trafficking as a crime may be misunderstood by the judiciary. An example of this can be found in *R v Bogdan & Marius Nejlloveanu*,²⁵⁶ where Bogdan Nejlloveanu's sentence was increased from 6 years to 9 years on appeal. However, it should be noted that some sentences have also been decreased such as in *R v Martin Bruschi and Dusan Hurvat*,²⁵⁷ which saw sentences of 10 years decreased to 8 years.

Participants cited the lack of clear and specific guidance as an explanation for inconsistency in sentencing. Whilst the Sentencing Guidelines Council (SGC) issued guidelines on the Sexual Offences Act 2003 in 2007, no sentencing guidelines were produced for labour trafficking (see below). Furthermore, the aggravating factors prescribed by the Convention and the Directive such as organised criminal groups or trafficking by public officials are not explicitly recognised in the guidelines produced for sexual offences. The only guiding principle in this guidance is in PART 6D: Trafficking paragraph 8 which states, "aggravating factors such as participation in a large-scale commercial enterprise involving a high degree of planning, organisation or sophistication, financial or other gain, and the coercion and vulnerability of victims *should move* sentences towards the maximum 14

²⁵⁴ Crispin Blunt, HC Deb 13 Sep 2011, c887.

²⁵⁵ Consecutive sentences are served one after the other - e.g. a 6-month sentence followed by a 3-month sentence.

²⁵⁶ *R v Bogdan & Marius Nejlloveanu*, at Manchester Crown Court, 26 January 2011. The two defendants who were sentenced to 6 years' which was seen as unduly lenient by Attorney General and increased to nine years (for conspiracy to trafficking for sexual exploitation into the UK and controlling prostitution) and 21 years' respectively, which was increased to an Indeterminate Sentence with 10 year and six months minimum (for four rapes, conspiracy to trafficking for sexual exploitation into the UK, assault, causing a person to engage in sexual activity without consent, controlling prostitution).

²⁵⁷ *R v Martin Bruschi and Dusan Hurvat* [2012] 1 Cr. App. R. (S) 47.

years”.²⁵⁸ Ambiguity within the sentencing guidelines were recognised in *R v Roman Pacan & others*²⁵⁹ where Lord Justice Maurice Kay stated:

“[T]here is a degree of ambiguity in the way the guidelines are set out. Thus, for example, the bracket for which six years’ custody is the prescribed starting point assumes coercion. However, coercion then appears as a potential additional aggravating factor, and indeed appears ... as one of a number of factors, including vulnerability and, by implication, age of victims, which ‘should move sentences towards the maximum 14 years’. Age is not referred to in the specification of a starting point of six years. Nor is it mentioned as an additional aggravating factor ... But it is referred to, and must have been considered relevant ... There is similar ambiguity as to vulnerability.”

Furthermore, the concept of coercion is not clearly defined within the guidelines, leaving it open to interpretation by the individual judge. Without clarification, this may cause confusion and in turn may adversely affect sentencing. Again in *R v Rong Chen, Simon Dempsey and Jason Owen*,²⁶⁰ Judge Stephens stated that the aggravating factor of a *large number of people trafficked* “gives no indication as to what is considered to be a large number ... It is repugnant to traffick one person ... I see no reason why the 2007 guidelines could not have identified this aggravating feature as ‘More than 1 person trafficked and if so the number of persons trafficked’”.²⁶¹

Currently, as part of a revision of sexual offences sentencing, these guidelines are being reviewed but this will not include other forms of trafficking e.g. domestic servitude and forced labour. It is intended that the new matrix for considering sentencing will also look at culpability of the defendant and harm to the victim. This may assist judges in trafficking for sexual exploitation, however, to comply with the Convention and Directive, explicit reference needs to be made to specific aggravating factors not currently considered.

Furthermore, it is unknown to what extent the mitigating principles set out in *R v Delgado-Fernandez & Zammit*; *R v Thi*²⁶² (discussed in Chapter 2) and *R v Roci and Ismailaj*²⁶³ apply in reducing sentences in cases where the person comes to the UK in the knowledge that they will be working as a prostitute but the terms of their work are completely misrepresented. They may be forced to perform unprotected and harmful sexual services such as extreme sadomasochism. Service providers supporting such women report high levels of trauma exemplified in this group. In *R v Roci and Ismailaj* the appeal against sentencing was allowed, reducing the main appellant’s sentence from 11 years’ to 9 years’ imprisonment. Although the women came to this country willingly to work as prostitutes, they had been coerced to perform services contrary to their wishes, experienced threats and were subject to inhuman treatment. In addition they received only 25 per cent of their earnings. Within this judgement, weight for reducing the sentence was given as “the victims of these offences were not only adult prostitutes, but they came to this country for the purpose of carrying on a trade as prostitutes. The coercion to which they were subjected was extremely minor compared with the coercion and corruption to which the victim in *Maka* [recruited as a waitress and forced to work as a prostitute] was subjected.”²⁶⁴ However, given the potential traumatic impact on these victims, it may be argued that prior occupations should not be of concern in the sentencing of such cases.

In the UK, labour trafficking conviction rates are generally lower than sex trafficking cases, with adult domestic servitude cases faring the worst. Indeed in *R v Rebecca Balira*,²⁶⁵ the defendant was sentenced to six months’ imprisonment, and before *R v SK*, in the initial trial, the judge ordered a nine-

²⁵⁸ Emphasis added. Sentencing Guidelines Council, *Sexual Offences Act 2003: Definitive Guideline* (2007). Available at: http://sentencingcouncil.judiciary.gov.uk/docs/web_SexualOffencesAct_2003.pdf [last accessed March 2013].

²⁵⁹ *R v Pacan & Others* [2009] EWCA Crim 2436

²⁶⁰ *R v Rong Chen, Simon Dempsey and Jason Owen* [2012] NICC 26.

²⁶¹ *Ibid.*, para. 34.

²⁶² *Delgado-Fernandez*, *supra* note 19.

²⁶³ *R v Roci and Ismailaj* [2006] 2 Cr. App. R. (S.) 15.

²⁶⁴ *Ibid.*, para.18.

²⁶⁵ *Balira*, *supra* note 114.

month suspended sentence. This may reflect a lack of understanding on the part of judges as to the seriousness of the offence and the harm caused to the victim. However, this may also be explained by the lack of specific guidelines accompanying labour trafficking and forced labour offences under s.4 of the AI(TC)A and s.71 of the CJA.

As a result of an unduly lenient sentence application on the basis of *conspiracy to traffick*, *R v Khan*²⁶⁶ was the first case where the Court of Appeal set out factors to be taken into consideration when assessing the seriousness of the s.4 offence: (1) nature and degree of deception or coercion exercised upon the incoming worker. Coercion will be an “unusual” aggravating feature in a case of economic exploitation except for deceitful promise of work on favourable terms; (2) nature and degree of exploitation exercised upon the worker on arrival in the workplace. This will involve a consideration both of the degree to which what is promised is in fact denied on arrival and the extent to which treatment in the work place offends common standards within the UK; (3) level and methods of control exercised ensuring that they remain economically trapped; (4) level of vulnerability of victim including economic, physical and psychological; (5) degree of harm including physical, psychological and financial; (6) level of organisation and planning, the gain sought or achieved, and the offender’s status and role within the organisation; (7) numbers of victims; (8) previous convictions for similar offences.

Again the concept of coercion within this judgment is not defined and these factors do not reflect the Convention and Directive in their entirety. In addition, reference is made to the SGC’s *Overarching Principles: Seriousness* guidelines,²⁶⁷ which provide that where the victim is particularly vulnerable, or there is deliberate targeting of vulnerable victims, or the offence is committed by a group or gang, this will be an aggravating factor in sentencing. However, these aggravating factors again do not echo the ones prescribed by the Convention or Directive. Lenient sentences imposed on labour trafficking may lead traffickers to base their activities in these types of exploitation which can produce the same profitable returns, but for which they will receive a shorter sentence. This is especially so as s.4 and s.71 offences are not privy to the unduly lenient sentence regime where sentences can be referred to the Attorney General for review under the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006.²⁶⁸ Thus treating types of exploitation differently in sentencing may not act as an overall deterrent, which is one of the aims of sentencing referred to in the Convention and Directive.

Article 25 of the Convention also requires States “to consider the possibility to take into account final sentences passed by another Party”. The obligation refers to the judge considering similar past convictions imposed on the trafficker in other countries.²⁶⁹ However, law enforcement officers stated that it is particularly difficult to obtain information on the person’s previous conviction for both EU and non-EU countries. Although the Schengen Agreement in Europe allows for easier information sharing across the European States that have signed up to the agreement, the UK is not party to it. Hence, it is generally more difficult to obtain a defendant’s conviction history from other EU States. Also the trafficker may have committed trafficking offences which are not linked to their country of origin. Such information is only available if requested from the specific country as there is no central European information database.

Like letters of mutual legal assistance, information on a defendant’s criminal history can be delayed and the information may arrive after the trial has concluded. To overcome this, some police personnel had formed relationships with their counterparts in other EU countries which had led to more efficient information sharing, though such relationships were not the norm. Furthermore, one law enforcement

²⁶⁶ *R v Khan* [2010] EWCA Crim 2880.

²⁶⁷ Sentencing Guidelines Council, *Overarching Principles: Seriousness guideline* [online]. Available at http://sentencingcouncil.judiciary.gov.uk/docs/web_seriousness_guideline.pdf [last accessed March 2013].

²⁶⁸ *CPS policy*, *supra* note 210, p.28.

²⁶⁹ *Explanatory Report to the European Convention*, *supra* note 15, para. 269: “To meet these difficulties Article 25 provides for the possibility to take into account final sentences passed by another Party in assessing a sentence. To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts – like convictions by the domestic courts – are to result in a harsher penalty. They may also provide that, under their general powers to assess the individual’s circumstances in setting the sentence, courts should take convictions into account.”

officer stated that not all judges recommend the deportation of EU-nationals after serving their sentence which is permissible under European Citizens Directive (2004/38/EC) on the grounds of public policy, *public security* or public health. This needs to be addressed to come into line with the Convention, which could be addressed through training for judges.

Complexity of trafficking trials

Victim-Witness

Psychosocial consequences of trafficking can affect a trafficked person's ability to act as a witness. Insufficient support including counselling, and a failure to deal with other pressing issues, such as unresolved immigration status, can impede victim's willingness to testify. The nature of trauma makes victim-witnesses unpredictable. They may also become disinterested or unwilling to participate as they are intimidated by traffickers; they may be too scared or unwell to testify, or they may have decided to return home in the time it has taken for the case to come to trial.

In one case of forced labour, the contact and support for the victim was not maintained, resulting in an unsuccessful prosecution. The case involved the CPS deciding to solely indict for s.71 of the CJA, despite there also being offences under s.12 of the Gangmasters (Licensing) Act (G(L)A) 2004.²⁷⁰ This decision was taken on the basis that s.71 carried a significantly higher sentence (14 years as opposed to 12 months under s.12 of the G(L)A). However, the victim-witness failed to attend court, which meant that without their evidence the case collapsed.

Participants raised victimless or evidence-based prosecutions, similar to those in the context of domestic violence, as an option to bypass secondary trauma caused by testifying in court, or in the event that the victim withdraws their support before trial. Whilst there are a very small number of victimless prosecutions under trafficking legislation, this route was not regularly pursued, as it requires extensive resources to gather the necessary evidence. The resource cuts discussed in Chapter 5 make this option mostly untenable. This, and the case above, illustrates the indispensability of victim support throughout the criminal proceeding and the use of additional alternative charges in the case in the event that the victim withdraws their support at a late stage.

Psychological complications can also affect victim testimony. Ideally it is advantageous to present witnesses who are articulate and consistent who testify, from start to finish, with composure. However, it is commonplace for trafficked persons' accounts to be inconsistent (see Chapter 5), and the defence counsel and juries may equate these inconsistencies to lies. These difficulties can only be mitigated through tailored and steady support for the witness; together with the prosecuting advocates' accurate explanation of the victim's condition to the jury.

Defence strategy

Article 12 of the Directive requires that, without prejudice to the defence and with consideration of the victims' personal circumstances, Member States shall ensure the implementation of measures that avoid secondary victimisation, in accordance with law and rules of judicial discretion. Specifically, the provision set out in Article 12.4 (d) prohibits "unnecessary questioning concerning the victim's private life".

Participants were concerned as to how this could be achieved in the UK context of an adversarial system, as such use of questions were seen as part of the defences' right to thoroughly test the evidence against them so that they receive a fair trial, and any resulting conviction is robust. This has been interpreted as attacking the victim's credibility, suggesting that their allegations are unfounded and they have ulterior motives for bringing the case, such as gaining asylum, compensation, improved living conditions or even attention. The benefits deriving from the NRM were also argued to act as

²⁷⁰ Offences: acting as a gangmaster, being in possession of false documents etc.

incentives. This was successfully rebutted in *R v John and Josie Connors*, by stating that the UK was duty bound by the Convention to provide support and assistance: therefore they were entitlements rather than incentives.

The ATMG learnt that oppressive cross-examinations of trafficked persons are common in the context of trafficking prosecutions. One trafficked person interviewed stated:

"I was so sick. I was tired. In the end of the questions I was having problems concentrating on what they were saying. The lawyers asked me many bad questions and it made me feel like they were trying to say I was a liar and a prostitute."

As well as questions posed to cause inferences, techniques such as "pinning out"²⁷¹ or multiple questions in one statement, can lead to the re-experience of trauma under high-pressure circumstances leading to confusion and secondary (or post-crime) victimisation.²⁷² It is for the judge and prosecutor to be vigilant and object to such questioning where it is irrelevant and oppressive. The cross examination in the Rochdale case²⁷³ was described as oppressive; however, the judge only permitted questions relevant to the exploitation period and objected to questions regarding the trafficked person's prior history. However, the judge and the prosecutor cannot pre-empt what questions defence barristers will ask, and sometimes when the question is asked the damage has already been done to the victim-witness. Presently, defence barristers are currently not obliged to undergo training on the cross-examination of traumatised witnesses. However, the Advocacy Training Council in its 2011 report *Raising the Bar* recommended compulsory training and certification for barristers conducting cases involving vulnerable witnesses.²⁷⁴

Some prosecutors also noted that traffickers appear to prepare themselves in case of arrest. One legal practitioner construed:

"[T]hey take nice smiley photographs of the victims and things like that so they have those on their computer. And that may be before the abuse has actually started and they can then say "oh look, you are fine, you are happy; I was so nice to you and I bought you clothes and I was being kind".

Or the defendant may simply assert the trafficked person consented and make a full denial of the victim's account of mistreatment. This assists the defence barristers in questioning the credibility of the victim. Another line of attack is to invoke trafficking myths (whether sincerely believed or not) and to correlate these to the victims' behaviour. For instance a legal practitioner described:

"[T]hey had the opportunity to report to the police, they didn't do so for X period of time ... I think this can be explained to juries but I don't know, there is still that problem that the normal "way", in inverted commas, which victims behave may not apply to victims of trafficking and that can leave arguments open to the defence and generally [these arguments are] quite specious".

In *R v Lucy Adeniji*,²⁷⁵ a case involving child domestic servitude, one victim returned to the defendant's house after being placed with another family. The defence argued that if treatment was so horrific she would not have returned. However, the prosecuting advocate was able to demonstrate that the victim was effectively dependent on the trafficker, as she had nowhere to go and spoke little English, coupled with a distrust of the authorities. Again this reinforces the need in some cases for

²⁷¹ "Pinning out" is a term used to describe the practice of barristers asking leading questions to witnesses to get them to agree with certain facts before getting to their main argument which is framed by these agreed facts. This is then used to argue that the witness must logically agree with that barrister's particular argument.

²⁷² Doerner, W., & Lab, S. *Victimology* (2012).

²⁷³ Hassan, *supra* note 243.

²⁷⁴ The Advocacy Training Council, *Raising the Bar* (2011) Available at: www.advocacytrainingcouncil.org/images/word/raisingthebar.pdf [last accessed 11 March 2013]

²⁷⁵ *R v Adeniji* at Isleworth Crown Court, 18 March 2011.

jurors to be assisted with expert evidence to understand the complexities of the relationship between the trafficker and the victim.

Special measures

The Convention and Directive provide for measures to ensure effective support and protection for trafficked persons during the investigation and prosecution that explicitly adhere to a victim-centred approach. Article 30 (a) and (b) of the Convention respectively oblige States to adopt measures to protect victims' privacy and ensure their safety, namely protecting the victims' private life and, where appropriate, identity; and ensure the victims' safety and protection from intimidation in the course of proceedings. These provisions are further complimented by Article 12.4 (b) and (c) of the Directive which supports the trafficked person's right to choose what is best for them when giving evidence, either through audio-visual technology to prevent testifying in front of their trafficker or by giving evidence in open court. The logic behind special measures is that it will reduce trauma and discomfort experienced if testimony is not given in sight of the perpetrator, therefore improving the quality of the evidence.

Special measures are available for vulnerable and intimidated witnesses. They are granted at the discretion of the judge on application by the prosecutor. The judge may give a specific measures direction under the Youth Justice and Criminal Evidence Act (YJCEA) 1999 for the following whilst the trial is in session: ABE interviews played as evidence-in-chief;²⁷⁶ cross-examination and re-examination conducted over live video link enabling the victim to give evidence outside the court through a televised link to the courtroom;²⁷⁷ screens to shield the witness from the defendant;²⁷⁸ and the clearing of the public gallery for evidence to be given in private if it is in the interests of justice.²⁷⁹

Special measures should be granted as a matter of course in all trafficking trials given that trauma may be suffered by trafficked persons for sexual and non-sexual exploitation. All trafficked persons arguably fit within these categories. However, only cases involving sexual offences are the victims afforded automatic rights to apply for special measures and they may not be put in place unless requested. Currently persons trafficked for labour do not qualify for automatic entitlement to special measures and prosecutors have to argue why these individuals are vulnerable and intimidated witness. There are no guarantees that such arguments will be successful and an order made. There were reported cases of forced labour where some special measures were not granted. It should be good practice for all police forces/CPS to request these protection mechanisms for all trafficked persons. A better option would be to make them automatically available in all trafficking cases rather than having to make application to the court for them. This would bring the UK in line with its obligation under the Convention and Directive.

Giving anonymous testimony (through the use of pseudonyms) to protect the victims' identity from defendants was thought unnecessary by interviewed participants; as in the majority of cases the defendant is likely to know the identity of the accusing victim-witness (except in cases where many victims had been trafficked over an extended period). Despite this, interviewed stakeholders placed emphasis on anonymity in respect of reporting victims' names in the media. The Convention's *Explanatory Report* recognises the importance of this, stating it is liable to worsen the problem by invading victim privacy, making it even more difficult for them to reintegrate socially.²⁸⁰ In the UK it is a criminal offence for anyone to publish a victim's name, photograph or other identifying details involving sexual offences. S.2 of the Sexual Offences (Amendment) Act 1992 creates a ban on reporting any matter likely to identify the victim of a sexual offence, from the time that such an allegation has been made and continuing after a person has been charged with the offence.

²⁷⁶ S.28 of the YJCEA.

²⁷⁷ S.24 of the YJCEA.

²⁷⁸ S.23 of the YJCEA.

²⁷⁹ S.25 of the YJCEA.

²⁸⁰ *Explanatory Report to the European Convention*, supra note 15, para. 229.

However, in 2012, the ATMG observed the printing of the name of two trafficked girls by a large daily newspaper and a television channel as part of coverage on the sex trafficker's arrest. Such coverage could alert traffickers in the trafficked person's country of origin and put their family at risk; potentially affecting a trafficked person's future reintegration and prospects. Such situations can be avoided by efficient police planning. With respect to labour trafficking, which does not benefit from automatic reporting restrictions, the judge has discretionary power to impose a reporting restriction order only if a prosecuting barrister has applied for one. This power should be exercised in trials as a matter of course, except where the trafficked person does not consent or wish to have anonymity.

Concerns were raised in relation to what information is given to victims about special measures, particularly in relation to anonymity and protection both in terms of them and their families. One service provider stated:

"[V]ictims themselves are not always clear on [anonymity] ... sometimes women give their statement under a pseudonym but that can then give them a false impression that their identity is not going to be exposed where screens are used, and it won't be exposed to the media. But it will be exposed because your ABE interview will be played in court and at that point women say "but they've played my video and everyone has seen me now". That needs to be made clear...women can be led to believe and sometimes the police have allowed them to believe that they won't be [identified] possibly to persuade them [to participate]"

The ATMG also has concerns in relation to the efficacy of certain special measures, in particular the witness screens to shield the witness from being seen by the accused. One interviewed trafficked person, who opted to give evidence behind screens, stated: *"It was awful. The screens that they use are not good. They are just office screens and you can see through the cracks."* The application of such measures must ensure effective protection guaranteed under the Convention. Therefore there is an argument that given this information, the suitability of such measures should be reassessed for trafficked persons. This would also address the potential inefficacy of special measures for other traumatised witnesses, such as rape victims.

Good practice – Capacity building for Southwark Crown Court's Witness Service

Victim Support is an independent national charity for victims of crime, which also runs the parallel organisation, Witness Service, in all Crown Courts in England & Wales. The Witness Service is mainly staffed by volunteers who offer support and assistance to witnesses, victims and their families before, during and after the trial. This includes providing emotional support for witnesses to feel more at ease in Court; supplying information about what to expect including the court powers and procedure; providing an opportunity to discuss the case post-trial to allay any concerns; and signposting the witness to other organisations if additional support or information is required.

As part of the MPS SC&O9 Trafficking and Prostitution Unit's outreach work, a three-hour seminar was conducted with Witness Service in Southwark Crown Court. This particular Witness Service was selected as many of the Unit's trafficking cases are held there. The Witness Service's basic and special training packages currently do not cover trafficking specifically. The Unit thought it would be beneficial to conduct specific training for the Service's volunteers to make them aware of the complexities of trafficking and the impact it has on victims, so that volunteers can better understand the person they are supporting.

This will prevent interactions and insensitivities based on trafficking misconceptions occurring which would negatively affect how trafficked persons' view the volunteers and hamper the provision of any subsequent support.

Good feedback was received from seminar participants who stated that the seminar had “opened their eyes” and that this would improve the service given to trafficked persons. In turn, the Unit hopes that this will build on efforts to improve both victim wellbeing and efficiency of victim-witness testimony during trial.

Trafficked persons are often intimidated by the UK’s judicial system. Many were also reportedly uncertain about the language used and roles of the prosecution and defence, as well as other court staff, especially in cases of multiple defendants where there may be more than one defence barrister asking them questions. It was seen as good practice for a trusted individual to attend the trial. Some trafficked persons may request that the trusted individual wait outside to be available to support them after the trial. Others request that they sit in the courtroom to reassure them of a friendly presence while they are being questioned by, often aggressive, lawyers. The presence of a known and trusted individual to gauge their reaction and meet their immediate needs after they have given evidence is helpful in stabilising and grounding them.

Whilst Witness Service can offer trafficked persons court familiarisation visits before trial, it was regarded as good practice for the prosecuting barrister to meet briefly with the victim prior to commencement of the trial so that they are familiar with the person who will be leading the questions. However, there is reticence in implementing this in practice due to concerns over the coaching of witnesses. Experienced prosecutors stated that there was a difference between coaching i.e. discussing the evidence, and meeting with the victim. Indeed in rape prosecutions, the victim-witness can meet with the CPS prosecutor and the prosecuting barrister. It is stated that “[t]he purpose of such a meeting is to build trust and confidence and to enable us to reassure the witness that their needs will be taken into account”.²⁸¹ Therefore this practice should be considered and reflected in specialist prosecutor training on trafficking.

Witness protection

Article 28.1 of the Convention provides for “effective and appropriate protection from potential retaliation or intimidation, in particular, during and after investigation and prosecution of perpetrators”, with such protection covering trafficked persons,²⁸² persons reporting trafficking or cooperating in the investigation,²⁸³ other witnesses, including whistleblowers and informers²⁸⁴ and, when necessary, members of the family of victims and witnesses.²⁸⁵ This protection extends to NGOs who support the victim through the investigation and trial.²⁸⁶ The Convention’s *Explanatory Report* states that “intimidation of witnesses, whether direct or indirect, may take different forms, but its purpose is nearly always to get rid of evidence against defendants so that they have to be acquitted”.²⁸⁷ There was no reported intimidation to NGOs or victims within safe accommodation, owing possibly to the current mechanics of the NRM where trafficked persons are supported in another area from where they were exploited.

Importance of victim-witness support

The following case illustrates the risk posed to trafficked persons who are not supported in secure accommodation. It concerned a woman who had been duped into coming to the UK for a short holiday

²⁸¹ *CPS Policy*, *supra* note 210.

²⁸² *European Convention*, *supra* note 15, Article 28.1 (a).

²⁸³ *European Convention*, *supra* note 15, Article 28.1 (b).

²⁸⁴ *European Convention*, *supra* note 15, Article 28.1 (c).

²⁸⁵ *European Convention*, *supra* note 15, Article 28.1 (d).

²⁸⁶ *European Convention*, *supra* note 15, Article 28.4.

²⁸⁷ *Explanatory Report to the European Convention*, *supra* note 15, para. 285.

but was put to work on house duties and childcare. She was also pregnant and had other health issues. The victim had not previously asked for police assistance as she feared repercussions from the employer who was a powerful figure in their country. This changed when the employer refused to obtain more of her medicine. With the help of women she had met at the school run and the service provider, the police were called and she was immediately taken to a hospital by an ambulance because of her ill health.

The police did not put any protections in place. Consequently, the victim was visited by the employer and her two sons who intimidated her by asking her how she contacted the police and who assisted in this. They stated that they would come back the next day. The police were contacted and they stated they did not know how the employer could have found the hospital, even though it was the closest local maternity ward from the place of exploitation. The police then informed the victim and the service provider that they had addressed the situation without informing the parties of what action had been taken so that they could safeguard the victim from further threats. In this case there was a lack of police consideration for victim protection.

Actual threats to the victim's families to discourage the victim from testifying were frequently used. However, it was reported that police officers generally offered little with regard to protection to address such fears. Two of the interviewed trafficked victims' families were threatened during and after the trial, one disclosed their experience:

"[A]ll during the court the trafficker's family were threatening my family at home. This made me feel terrible. The police tried to help by reporting the trafficker's family to the trafficking organisation in my country but all they did was contact the local police who, of course, did nothing because the trafficker's family are 'big people' and then they told my family that they would have to pay a lot of money if they wanted the police to do anything. This was really hard on me. I felt I caused my family so much suffering ... now when the trafficker was convicted things got worse. There was a lot of publicity in the media. They came to my family home and threatened my family because of the 'lies' I told about their well-known and famous relative in the UK. It got worse afterwards. I had to see someone regularly and take medicine. Later the trafficker appealed the sentence and it was reduced. I felt even worse. I felt that the police promised too much and did not manage to keep those promises."

Most of the interviewed participants stated that threats to the victims' families were the crucial factor in their decision to participate in criminal proceedings. Such threats may be empty in substance, however, the trafficked person views them as real and an extension of the psychological control. One service provider explained, "*we've got a case where the victim, she is not being I would say particularly controlled, but she thinks, literally, a trafficker is on every corner.*" Therefore such fears need to be addressed delicately and adequately if meaningful communication is to be established.²⁸⁸

The Convention's *Explanatory Report* requires that States "must take the necessary measures to provide effective and appropriate protection" for the categories named in the Convention.²⁸⁹ The obligation requires different levels of protection according to risks posed to the individual, and the period of protection depending upon the nature of the threats made to the person. The Convention does not oblige States to provide full witness-protection in every case but measures such as "preventative technical equipment, agree an alert procedure, record incoming and outgoing telephone calls or provide a confidential telephone number, a protected car registration number or a mobile phone for emergency calls"²⁹⁰ may also be sufficient if consented to by the persons in question.²⁹¹

²⁸⁸ O'Reilly, *supra* note 193, p.43.

²⁸⁹ *Explanatory Report to the European Convention*, *supra* note 15, para. 281.

²⁹⁰ *Ibid.*, para. 286.

²⁹¹ *Ibid.*, para. 289.

The Convention does recognise that in extreme instances full protection may be required. It was argued by service providers that this would encourage increased participation in successful prosecutions of traffickers and ensure that individuals feel safe in the long term. The *Explanatory Report* states that in some cases a new place of residency may be warranted to guarantee effective protection in another part of the country or possibly in a different country.²⁹² It was reported by police that they can generally work with EU countries more readily on such issues; however, non-EU countries often posed particular difficulties in achieving effective and lasting cooperation on safety issues, despite bilateral or multilateral agreements in place. Migrating the victim's inner family to the UK may give effect to Article 28. However, given the current political climate on immigration, permitting trafficked persons' families to migrate to the UK was not seen as an attainable option.

Aftercare

At the end of the trial the trafficked person may be exhausted, agitated, dissociated and even suffer physical reactions to the experience. However, service providers stated that once the trial verdict is read out by the jury there is little support or protection offered to trafficked persons. Indeed it was reported that police protection against the trafficker's associates for trafficked persons leaving from court was lacking.

Limited support after trial was identified as a major concern amongst participants in destabilising the trafficked person's psychological recovery, especially if the trafficker is found not guilty. Whilst a guilty verdict may offer relief, this can turn into an anticlimax for the victim as it is replaced with other fears, such as what happens when my trafficker gets released from prison? One trafficked person described: "*When the trafficker comes out they may be allowed to stay in the UK because of their family situation. I am worried all the time that they will find me*".

Such concerns can be allayed by the Victim Liaison Unit (VLU), a section of the National Probation Service (NPS) which regulates the release of prisoners and informs victims of timescales of a sentence and release dates. It also responds to any concerns the victim may have when the offender is being considered for release, such as conditions to be included in the release licence, like restricting the trafficker from living in a certain part of the country. Currently the support of the VLU is only available to individuals where the trafficker has received a sentence of greater than one year. The ATMG recommends that the support of the VLU be available to all victims of trafficking regardless of the duration of sentence imposed on the trafficker.

Currently the VLU contacts the victim by letter after the trial. Victims often don't understand the significance of the letter or ignore it. By making them aware that they are likely to be contacted, they can be prepared to engage more effectively. Service providers reported a lack of understanding by the VLU about trafficking. For instance, trafficking for sexual exploitation was confused with sexual assaults by VLU Officers. Sexual assaults may not require the level of protection required for a trafficked person, thus potentially resulting in inappropriate safety plans. Therefore to ensure adherence to a victim-centred human rights-based approach, NPS Victim Liaison Officers should receive trafficking awareness training. The HBF can facilitate meetings with VLU representatives to enable the trafficked person to engage with the VLU in a meaningful way and develop a relationship, thus assisting in ensuring the longer-term safety of the victim.

Compensation

Obligations to provide access to compensation are anchored in both the Convention and Directive. Article 15 of the Convention obliges States to ensure victims have access to information on relevant judicial and administrative proceedings in a language which they can understand; shall ensure the right of victims to compensation from the perpetrators; and adopt measures to guarantee

²⁹² In this respect, para. 291 of the *Explanatory Report* goes further by stating that this "necessitates close cooperation between the country of origin and the receiving country, and this cooperation could also be brought about by bilateral or multilateral agreements as referred to in Article 28(5) between the countries concerned."

compensation for victims through the establishment of a fund for victim compensation. Article 17 of the Directive says that: States “shall ensure access to existing schemes of compensation to victims of violent crimes of intent”. Article 12 provides that the trafficked person shall have access, without delay, to free-of-charge legal counselling, including for the purpose of claiming compensation. In creating such provisions, the Convention and Directive acknowledge the potential restorative, punitive and preventative effect of compensation.²⁹³

Compensation orders remain a contested issue with one solitary compensation order made in the course of a trafficking trial: in *R v Rebecca Balira*, the court awarded the victim £3,000.²⁹⁴ Whilst there have been significantly large confiscation orders imposed on traffickers, there has only been one compensation order granted. The judge has power to order the defendant to pay compensation, on conviction, for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence, under s.130 of the Powers of Criminal Courts (Sentencing) Act (PCC(S)A) 2000. However, obtaining compensation through this method is difficult as orders can only be considered if the defendants’ assets are realisable i.e. they have been seized and confiscated immediately. Furthermore, judges are very unlikely to impose compensation orders if they impose a custodial sentence on the trafficker. This is evidenced in the minimal sentence imposed on Rebecca Balira.

Applications for such orders can be made by the police or prosecutor,²⁹⁵ but have not been requested as a matter of course. It appears that police either lacked awareness of such procedures or, as some participants feared, that the police did not inform the victim of this right to compensation possibly to avoid the defence counsel arguing that the allegation was made only to obtain compensation, which would potentially lead to an unsuccessful prosecution. For prosecutors, compensation orders appear to be a secondary consideration with the primary focus being on securing a conviction. As most traffickers are likely to receive some form of custodial sentence, this may explain why compensation orders are not actively pursued. However, as of 3 December 2012, s.63 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 inserts section 130 (2A) into the PCC(S)A providing: “A court must consider making a compensation order in any case where this section empowers it to do so”. This new requirement is in addition to s.130 (3) to “give reasons ... if it does not make a compensation order”. Therefore increased attention may be given to compensation for trafficked persons due to this development.

The UK operates the victim compensation fund through the Criminal Injuries Compensation Authority (CICA). Though this method has seen trafficked persons compensated, this avenue has its own difficulties as although the trafficked person may have “access” in literal terms to the fund, in practice they have no “meaningful” access to this compensation scheme. Applying to the scheme is particularly difficult for a person whose first language is not English. Furthermore, the Government does not currently offer legal counselling on CICA applications, despite Article 17 obliging Members to do so.

CICA is designed to compensate victims of violent crimes. As trafficking is not included as a standalone CICA tariff, many trafficked persons are excluded from applying, as many will not have been exposed to physical and quantifiable violence – especially persons trafficked for labour. Successful applications have materialised primarily through the assistance of the pro bono initiative provided by the private law firm, Hogan Lovells. The CICA scheme is currently under review, with proposals to remove the first seven bands of physical injury, and the requirement to tie a trafficked person’s eligibility under the scheme to a positive conclusive grounds NRM decision, despite the difficulties with this identification system.

²⁹³ See Skrivankova, K. ‘The Right to Compensation for Trafficked Persons: An Overview’, in the *Trafficking Handbook*, *supra* note 44.

²⁹⁴ *Balira*, *supra* note 114.

²⁹⁵ This includes drawing the court's attention to its powers to award compensation and inviting them to make such an order where appropriate.

Another option for trafficked victims is to initiate a civil claim for compensation. This was utilised in *AT & Ors v Dulghieru & Anor* in 2009²⁹⁶ in which the High Court ordered £611,000 to be paid to four Moldovan victims five years after the traffickers were convicted. It was stated by some participants that the civil route, and potentially cross-jurisdiction civil cases, should be developed. However, without pro bono legal assistance, such claims require the claimant to fund their own case, which may not be a viable option. Therefore the current compensation avenues are ineffective in securing compensation for trafficked persons and do not fulfil the spirit of the requirement for compensation in the Convention or Directive.

Conclusion

Several CJS actors play a role in proceedings against traffickers. Successful prosecutions depend on both the level of knowledge of the CPS lawyers, prosecuting advocates and judges, and the support afforded to trafficked persons participating in the proceedings. Furthermore, the outcome of the trial also largely depends on how the complex crime of trafficking is explained to the jury. Special measures, both in court, as well as broader protection for victim-witnesses, should be considered in all trafficking trials. Finally, until a combination of adequate victim-witness support and protection, and competent presentation by prosecuting advocates is achieved, many traffickers will continue to enjoy impunity. Once traffickers are convicted they should receive sentences that are not simply viewed as an occupational hazard. Therefore present sentencing inconsistencies, particularly between sexual and non-sexual exploitation, warrant a review of sentencing if trafficking in the UK remains unabated.

Recommendations

- **Ensure that all CPS lawyers, prosecuting advocates, judges and VLUs receive training on trafficking laws and the nature of the crime.**
- **Develop specialist CPS lawyers and judges, similar to the *rape-ticketed* model.**
- **Issue detailed sentencing guidance for all trafficking and forced labour related offences.**
- **Ensure that trafficked persons are supported throughout and after criminal proceedings. Readily provide, where necessary, efficient special measures including witness protection.**

²⁹⁶ *AT & Ors v Dulghieru & Anor* [2009] EWHC 225 (QB).

Chapter 8: Non-criminalisation of trafficked persons

Traffickers will seek to exploit any channel for financial gain, including illegal activities such as forcing a person to commit crimes; this can be as profitable for traffickers as exploiting people within legal markets. Using trafficked persons to commit crimes creates distance from the trafficker, deflecting the authorities' attention and breaking the chain of causality. Across Europe, people are known to be trafficked for the following purposes: forced begging, cannabis cultivation, benefit fraud, selling fake or counterfeit goods, as drug mules, for sham marriages and for theft such as shoplifting and street robbery. Concerns have been raised that traffickers are also moving into new areas such as illegal adoption,²⁹⁷ metal theft, burglary and insurance fraud. It is plausible that other areas will be identified in the future.

In addition, the trafficker may give the trafficked person a false travel or identity document and if they try to use them, the trafficked person may be arrested for immigration or fraud offences. Furthermore, in some cases, victims of trafficking may over time mitigate their exploitation by working together with the traffickers and begin to occupy lower levels in the trafficking network, or are ordered to exploit other victims. For instance, there have been cases of sex trafficking where some victims have been prosecuted for prostitution-related offences after being directed by their trafficker to control other victims.

Despite obligations under the Convention and the Directive not to impose penalties (criminal or administrative) on trafficked persons for such offences, the UK has continued to prosecute and punish trafficked persons.

This chapter will discuss:

- The UK's obligations on this issue and the importance of upholding these provisions;
- The extent of trafficked persons criminalised;
- How the UK has interpreted these obligations;
- Relevant case law;
- Ability of various CJS stakeholders to distinguish trafficked persons from offenders;
- The Criminal Case Review Commission's role in reviewing such cases.

Directive and Convention obligations not to prosecute victims

The non-punishment principle is an essential element of the human rights-based approach. Two provisions namely Article 26 of the Convention and Article 8 of the Directive provide for non-punishment and non-prosecution respectively. The Convention states that States shall "provide for the possibility of not imposing penalties on victims", while the Directive goes somewhat further by stating that competent authorities, such as the police and CPS, are "entitled not to prosecute or impose penalties on victims".

For these provisions to apply, they stipulate that such victims must have been compelled to commit those crimes, while the Directive goes further stating that such offences must be committed as a direct consequence of being subjected to trafficking. Whilst States have discretion in how they implement measures under the Convention, the provisions per se generate legal entitlements for a victim of trafficking. If a trafficked person is prosecuted or detained in an immigration deportation centre, these acts breach the spirit of the provisions both in the Convention and the Directive which oblige States to protect and support trafficked victims. However, the ATMG research suggests that the pressures within the CJS to process defendants are inhibiting the adherence to the Convention and Directive.

²⁹⁷ Paragraph 11 of the Directive's Recital explicitly lists illegal adoption as an expression of "exploitation of criminal activities". See recent cases in the UK: Ormiston, K' 'Oxford couple tried to smuggle baby into UK from Nigeria' Oxford Mail. 19 April 2013 [online]. Available at: http://www.oxfordmail.co.uk/news/10366109.Couple_tried_to_smuggle_baby_into_UK/ [last accessed 20 April 2013].

There are two models with respect to understanding “direct consequence”: the duress model - the person was compelled to commit the offences; and the causation model - the offence is directly connected to or related to the trafficking.²⁹⁸ However, it should be noted that these provisions do not provide for blanket immunity for crimes committed by trafficked persons. In addition, there are various soft-law instruments,²⁹⁹ including the United Nations Office of the High Commissioner for Human Rights’ (OHCHR) recommended Principle 7.³⁰⁰ These principles can be infringed indirectly – failure to identify a trafficked person which leads to their prosecution for the compelled offence, and directly - by recognising the persons trafficked status but nevertheless “fail to attach an appropriate significance to this fact when deciding upon his/her responsibility” also leading to their prosecution.³⁰¹

Importance of implementing non-criminalisation obligations

Failure to apply the non-criminalisation provisions may cause secondary victimisation of trafficked persons first, by the trafficker, and subsequently, by the State. Such victimisation can result in the prolonged psychological and physical impact of being labelled a criminal, the effect of prison environment on the trafficked person and in not receiving tailored support and assistance in prison. A conviction can also have a long-lasting encroachment on the trafficked victim’s future life, as finding employment with a criminal conviction is more difficult.³⁰² A trafficked person interviewed, who informed the ATMG that she was found guilty of immigration offences, stated: “*Now I am beginning to get on with my life I realise how difficult this is with a prison sentence, even though it was suspended*”.

The prosecution of trafficked persons may also guarantee the impunity of traffickers and goes contrary to the positive obligation on the UK to investigate trafficking. Moreover, it is counterintuitive to prosecute victims, as this may diminish the trafficked person’s willingness to participate in subsequent criminal proceedings. Though there are cases where a trafficked person was initially criminalised, their conviction overturned and subsequently their trafficker was prosecuted and convicted, these cases are the exception rather than the rule. The past criminalisation of a trafficked person who later testifies against their trafficker in court is known to be used in the defence’s case to challenge the trafficked person’s credibility and may discourage police from investigating such cases.

If trafficked persons are dealt with as offenders there is also an increased risk of re-trafficking. In *S.B. Moldova v Secretary of State for the Home Department*,³⁰³ the trafficked victim was imprisoned for three months for immigration offences and then deported back to Moldova after their asylum application failed. Once returned to Moldova, their trafficker located them and re-trafficked them back to the UK for a further two years. In addition, a legal representative supporting a trafficked Vietnamese child stated that after the trafficked child was released from prison they were immediately re-trafficked to another cannabis farm. This demonstrates that the criminalisation of trafficked persons can further perpetuate trafficking rather than decreasing the practice.

²⁹⁸ *Gallagher, supra* note 80.

²⁹⁹ The principle are recognised in resolutions of the General Assembly of the United Nations, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings and the Miami Declaration of Principles of Human Trafficking. A non-punishment provision was also included in the Commonwealth of Independent States (CIS) Model Law on Providing Assistance to the Victims of Trafficking in Human Beings.

³⁰⁰ Which states: “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.

³⁰¹ OSCE Special Representative Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking in consultation with the Alliance against Trafficking in Persons Expert Co-ordination Team. 22 April 2013 [online]. Available at: www.osce.org/cthb/101002 [last accessed 23 April 2013].

³⁰² For instance, if the trafficked persons previously resided or came to be settled in the UK, employment prospects become limited due to past convictions disclosure. Furthermore, sentences of twelve months and over result in their automatic deportation without receiving tailored support or assistance.

³⁰³ *S.B. Moldova v Secretary of State for the Home Department*, CG [2008] UKAIT 00002.

Extent of criminalisation of trafficked persons in the UK

The Government agrees that this problem exists in the UK: “A small number of trafficked victims may be prosecuted for offences they have committed as a consequence of their trafficking situation.”³⁰⁴ However, current research conducted by the RACE in Europe project,³⁰⁵ and a PhD candidate Patrick Burland,³⁰⁶ raises concerns that the prosecution of trafficked persons may not be as uncommon as the Government purports. In particular, there seems to be widespread criminalisation of trafficked persons found in forced labour in cannabis factories.

Examination of UK news articles reporting on Vietnamese cannabis cultivation cases between January 2011 and March 2013 revealed some 80 cases that had several trafficking indicators. In one of the reported cases the Judge stated, “I accept that you were threatened and intimidated. You had people taking you about and deciding which locations you should be in”, however, the defendant was sentenced to 24 months.³⁰⁷ While it is not possible to conclude with certainty that these were trafficking cases, the failure to identify trafficking indicators and examine whether the accused were in fact trafficked persons is alarming.

Furthermore, the ATMG is aware from our wider network of at least a dozen more cases in the same period where persons trafficked for other forced criminal activity were criminalised. Indeed, as recently as March 2013, the ATMG was made aware of a woman who was imprisoned for 12 months for possession of a false passport and possessing documents used for fraud, despite Judge Guy Kearn QC stating, “*I accept that you have been a victim of trafficking and you were exploited.*”³⁰⁸ Additionally, a study into trafficked women in prison³⁰⁹ revealed that among 104 women interviewed, 43 were potential trafficked women prosecuted for a variety of offences, including possession of false passport and drug offences (cannabis cultivation and drug smuggling). These findings are worrying given that the research only covered women and only a selection of prisons in England and Wales. Therefore, it is conceivable that the true number of trafficked persons in prison across the UK is much greater. In contrast, according to the MoJ data set, since 2009 the UK has obtained a total of 49 convictions of traffickers under trafficking legislation.

Application of non-criminalisation obligations

Like many UK anti-trafficking measures the non-criminalisation obligation is implemented through policy rather than law. The main instrument giving effect to Article 26 (and Article 8 of the Directive) is contained in the CPS’s legal guidance on human trafficking.³¹⁰ This is problematic as in *Dao & Ors v R*,³¹¹ the Court of Appeal held, “With respect, valuable though this Guidance is, it constitutes guidance not authority”,³¹² thus calling into question whether implementation of the Convention and Directive obligations through guidance meets the treaties’ requirements.

Nonetheless the guidance states that if a prosecutor, from the information in the case file, believes there to be a credible suspicion that the potentially trafficked person was compelled to commit the crime, the decision to prosecute is based on a two stage test:

³⁰⁴ Home Office, *supra* note 48, p.38.

³⁰⁵ RACE project is a two-year initiative by Anti-Slavery International and its partners to improve knowledge about the nature and scale of trafficking of children and adults for forced criminal exploitation and forced begging across Europe. Website: www.antislavery.org/english/what_we_do/programme_and_advocacy_work/trafficking/race.aspx.

³⁰⁶ PhD candidate Patrick Burland upcoming dissertation at University of the West of England.

³⁰⁷ Gibbons, B., ‘Man Forced to Grow Cannabis at Homes: Five Vietnamese ‘Feared for His Life’ after Gang Threat’ Coventry Evening Telegraph, July 11, 2012.

³⁰⁸ Yorkshire Evening Post, ‘Leeds woman forced to work illegally by gang boss’ 1 March 2013. Available at: www.yorkshireeveningpost.co.uk/news/latest-news/top-stories/leeds-woman-forced-to-work-illegally-by-gang-boss-1-5458305 [last accessed 22 March 2013].

³⁰⁹ Hales, L., & Gelsthorpe, L, *The Criminalisation of Migrant Women* (2012) [online]. Institute of Criminology, University of Cambridge, UK. Available at: www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf [last accessed 12 March 2013].

³¹⁰ CPS, *Legal Guidance: Human Trafficking and Smuggling* [online] undated. Available at www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/ [last accessed March 2013].

³¹¹ *Dao & Ors v R* [2012] EWCA Crim 1717.

³¹² *Ibid.*, para. 57.

1. Is there clear evidence that the suspect has a credible defence of duress?
2. Is it in the public interest to continue with the prosecution?

Duress

The requirement of compulsion (i.e. the trafficked person must have been compelled to commit those crimes), as it stands in Article 26 (and the Art. 8 of the Directive) is therefore interpreted in the UK in accordance with the common law defence of duress. However, many practitioners stated that duress is too high a threshold. The defence of duress requires a specific threat to kill or grievously injure the defendant or a third party and that they reasonably believed that the threat was genuine;³¹³ the threat was "present, imminent, and impending" at the time of the criminal act;³¹⁴ there was no reasonable escape from the threat, for example by going to the police, except through compliance with the demands of the coercer;³¹⁵ and the defendant was not at fault in exposing himself to the threat.³¹⁶ A recent attempt to use this defence in the context of a non-criminalisation case failed in *Dao & Ors v R* where it was argued by the defence that duress should extend to threats of false imprisonment for non-compliance so as to bring the defence into line with Article 26 of the Convention. It was held by Lord Justice Gross that "the Trafficking Convention provides no assistance to the Appellants' submissions in that regard. Put another way, the Trafficking Convention sheds no light on the true scope of duress."³¹⁷ This restrictive interpretation does not assist victims who are controlled by psychological coercion. This interpretation also is somewhat at odds with the wording of Articles 26 and 8 in that it creates particular hurdles that are not present in those provisions. Therefore it is likely that many prosecutors, when applying this test, will answer in the negative.

Public interest

In practice there are inconsistencies in the way the individual CPS lawyer/caseworker weigh the merits of the case and consider the public interest. The Guidance states that the following factors lean towards not prosecuting the victim-suspect: a credible suspicion that the suspect may be a trafficked victim; the role played by the victim in the criminal offence; the closeness of the offence to the trafficked person's situation i.e. was it a direct consequence; whether the victim committed the offence as a consequence of violence, threats or coercion; the vulnerability of, or fear felt by, the victim. Some CPS lawyers more readily discontinue prosecutions whilst others choose to pursue even after consulting the Guidance. One legal practitioner asserted:

"It is inevitable that this will incorporate an amount of subjectivity. The same set of facts may lead one prosecutor to prosecute and another to take a different view. Of course lawyers are not machines into which data is fed and the same result is produced on each and every occasion. The tests and guidelines referred to above provide discretion. It is perhaps fair to observe that in those circumstances some prosecutors take a more rigid view than others."

This approach allows for the arbitrariness of decisions that lead to many trafficked persons being prosecuted. This arbitrariness is in contravention of basic principles of the rule of law.³¹⁸

Good practice - Outreach prison initiative

The POPPY project runs an outreach prison initiative where one of their workers visits detention centres and prisons to provide advocacy and support to women in those hard-to-reach situations who have been trafficked. One trafficked person, who had been prosecuted for theft, was referred to

³¹³ *Attorney-General v Whelan* [1934] Murnaghan J (Irish CCA).

³¹⁴ *R v Graham* 1982 1 AER 801.

³¹⁵ *DPP for N. Ireland v Lynch* (1975) AC 653.

³¹⁶ *R v Sharp* [1987] 1 QB 353.

³¹⁷ *Dao & Ors*, *supra* note 331, para.50.

³¹⁸ Bingham, T., *The Rule of Law* (2010). See principles 2, 4 & 8.

POPPY by the Foreign Nationals Officer at a prison. She was assessed by the POPPY project worker at the prison and referred into the NRM and received a positive reasonable grounds decision. Before her bail hearing at the Magistrate's Court, the POPPY project worker was able to contact the woman's criminal solicitor and wrote a letter for the Court on her behalf explaining that POPPY believed her to be trafficked, that they had referred her to the NRM and recommended that the charges were dropped. The CPS guidance was also referred to. The CPS at the Court called the POPPY project worker to confirm their identity. The CPS indicated that they were keen to halt the prosecution but needed additional evidence. The POPPY project worker drafted a short report and it was agreed that they would return to Court in two weeks' time. At that hearing, the report was produced and the CPS dropped the charges as they concluded that she was trafficked.

The more serious the offence, the more likely it is that a prosecutor will consider it in the public interest to pursue a prosecution. The ATMG is aware of a case where a NRM identified victim was compelled to commit a string of serious offences and were prosecuted despite also being abused. This seems to point to a hierarchy of discontinuance i.e. the more serious the offence, the less likely the prosecution is to be halted or the conviction reversed. As current trafficking for cannabis cultivation involves exclusively Vietnamese and Chinese trafficked persons, and as these cases are still systematically prosecuted and convicted, there is possible discrimination in these nationalities accessing protections under the Convention.³¹⁹

In cannabis cases, a tension exists between the pressures placed on CJS actors by sentencing guidelines for drug offences, which state that cannabis cultivation requires a mandatory prison sentence³²⁰ and the Convention and Directive provisions. Furthermore, elements which are also trafficking indicators are listed in the guidance mitigating circumstances: offender's vulnerability was exploited; and pressure, intimidation or coercion falling short of duress. This may cause confusion in practitioners' minds as to how they should approach such cases i.e. not to prosecute the case or use trafficking as a mitigating factor only. Some participants state that in the light of the Convention/Directive obligations, it is inappropriate to treat these as mitigating factors in sentencing as this fails to take into consideration the victim's true condition.

NRM and interplay with prosecutorial decisions

The process of formal identification of trafficked persons under the NRM has also not proved helpful in ensuring that victims are not prosecuted. NRM decisions have been used as a pawn in the prosecution's case where their decision to prosecute has rested on the outcome of the NRM Competent Authorities findings. One legal practitioner who has appealed convictions against trafficked persons asserted:

"I have had experience where the prosecution will just try and rely on the outcome of the NRM, if they know about the NRM, rather than actually taking on board their own guidance, looking at the facts and deciding for themselves."

Nevertheless, there is evidence to suggest that even if an individual arrested or charged with an offence receives a positive NRM decision, the CPS can nevertheless pursue charges. This is due to the fact that the NRM decision is a civil decision (balance of probabilities) and therefore deemed of a "lower" level than the criminal justice burden of proof - beyond reasonable doubt. A positive NRM

³¹⁹ Article 3 – Non-discrimination principle: The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

³²⁰ Sentencing Advisory Council, *Advice to the Sentencing Guidelines Council: Sentencing for Drug Offences* (2010) p.33. Available at: www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/Good%20Practice/sentencing_for_drug_offences.pdf [last accessed 31 March 2013].

decision can be taken into account by the prosecutor, but does not automatically lead to the discontinuation of the prosecution. This demonstrates the strength of the CPS's decision-making power and therefore its responsibility in these cases. Also, judges attach great significance to positive NRM conclusive grounds decisions in granting bail. The CPS states that NRM decisions will be expedited in these circumstances. However, from our research this information has yet to trickle down to the frontline. This approach to prosecution decisions is concerning given the difficulties with the NRM discussed in Chapter 5.

Case law on non-criminalisation

In the 2010 case of *R v LM and Others*,³²¹ and recently in *R v N; R v LE*³²² of 2012, it was held that the CPS could still prosecute however strong the evidence of trafficking. In *R v LM and Others*, the judge found that the Article 26 obligation should be interpreted, as "no more, but no less, than that careful consideration must be given to whether public policy calls for a prosecution and punishment". In this case the guilty pleas were entered on the basis that they were trafficked victims and that they were compelled to commit the offence. At the time the pleas were accepted by the CPS, it was held that the CPS should have consciously applied its own Guidance, of which it was aware, but failed to do so. It was on this basis of a technicality that the appeals were allowed, as if the CPS had applied "its mind conscientiously to the question of public policy and reach an informed decision", it might not have decided to prosecute.³²³

R v N; R v LE was cited as creating an adverse Court of Appeal precedent in the UK for trafficked persons being prosecuted for crimes they were compelled to commit. This case concerned trafficking for forced cannabis cultivation of two Vietnamese nationals who were under 18 years old at the time they were discovered by police. N was locked inside the property and the windows were boarded up, and the traffickers threatened him with death if he escaped. They had originally pleaded guilty on the advice of their defence solicitors. The UKBA confirmed their status as trafficked through positive NRM conclusive grounds decisions. However, the Court of Appeal affirmed the conviction despite disclosure of coercion, including threats to their lives and, in one case, evidence that the cannabis factory was locked from the outside, therefore suggesting that control was being exerted over them.

Following from the precedent set in *R v LM and Others*, the Lord Chief Justice in *R v N; R v LE* affirmed that full responsibility for the decision whether to prosecute is vested in the CPS: "This requires a judgment to be made by the CPS in the individual case in the light of all the available evidence. That responsibility is vested not in the court but in the prosecuting authority ... in the context of the proper implementation of the United Kingdom's Convention obligation does not involve the creation of new principles."³²⁴ Therefore, the prosecutor is under a duty, in the appropriate circumstance, to discontinue such cases or offer no evidence where the case has progressed to the court stage; or if it had offered evidence, an application for a stay of the proceedings should be made where it is not in the public interest or there is a defence of duress.

In the absence of a stay, it is for a jury to decide on the facts whether the person committed the crime. The defence of duress can be presented to a jury but because of the difficulties explained earlier this has not usually been successful. It should also be noted that articles 26 and 8 do not provide a defence that may be advanced before a jury. It may, however, be advanced as a mitigating circumstance that may be taken into consideration by the judge in sentencing or form the basis of a conditional or absolute discharge.

R v N; R v LE is one of two cases involving two Vietnamese boys that have since been lodged with the European Court of Human Rights. Furthermore, there are currently four trafficking cases (including

³²¹ *R v LM and Others* [2010] EWCA Crim 2327.

³²² *R v N; R v LE* [2012] EWCA Crim 189.

³²³ *R v LM*, *supra* note 321, para. 21.

³²⁴ *R v N; R v LE*, *supra* note 322, para.21.

R v N) before the Court of Appeal, in which judgements are due with regards to the non-punishment principle. In all of these cases, positive NRM decisions have been obtained, yet the CPS maintained that it is/was (some of the cases were already prosecuted) in the public interest to continue the prosecution. As jurisprudence has swayed in favour of unfettered prosecutorial discretion it has been suggested that a trafficked person's non-prosecution and punishment rights should be enshrined in primary legislation to give full access to their rights.

Identifying trafficked persons compelled to commit crime

The seven stages of intervention

Whilst adherence to non-criminalisation provisions is seen as the prime responsibility of the prosecutor,³²⁵ in fact, all CJS actors are in the position and under the obligation to ensure the non-criminalisation of victims. The CPS's *Seven Stages of Intervention for a Victim of Trafficking who may be Criminalised* model identifies at least seven opportunities within the CJS to raise the issue and stop criminalisation of trafficked persons (for the complete scheme, see Annex III). These are:

1. The crime scene - where police/UKBA are the likely actors.
2. The interview - the issue can be raised by the police, UKBA, or defence solicitors.
3. At charging - the likely actors include prosecutors, defence solicitors, NGOs, police, UKBA, and the NRM Competent Authority.
4. When the case is being prepared for court - the likely actors include prosecutor, defence solicitors, NGO, and the NRM Competent Authority.
5. When the case is heard at court - the likely actors include prosecutor/advocate, defence advocate, magistrate, district judge, immigration judge, crown court judge, Youth Offender Teams (YOT), and the NRM Competent Authority.
6. At conviction - the likely actors include prosecutors/advocates, defence advocate, judge, probation officer, and the youth offender teams.
7. Post-sentence - the likely actors include legal representative, prison officers, outreach worker, and the NRM Competent Authority.

It should be noted that the earlier the trafficking is detected the easier it is to discontinue the prosecution. The following sections will discuss some of the key actors that should be involved in the various stages of identifying trafficked persons in this context.

Crown Prosecution Service

The CPS guidance advises, "prosecutors that when reviewing a case, where there are suspicions that the suspect may be a victim of trafficking they should be *pro-active* when making enquiries and obtain further information about the circumstances in which the suspect was apprehended".³²⁶

This requirement was reinforced in *R v O*³²⁷ which held that a prosecutor is duty bound to be proactive. This case concerned a trafficked person who was arrested at Dover attempting to flee to France. Despite credible evidence of trafficking, the defence barrister advised them to plead guilty. The Court of Appeal noted that neither the defence nor the prosecution had investigated their history or considered whether they had a defence of duress.

Such an obligation recognises that trafficked persons seldom inform the authorities that they are victims of trafficking, often for fear of reprisals from traffickers or the authorities. The CPS guidance

³²⁵ CPS, *Legal Guidance: Human Trafficking and Smuggling* [online] undated. Available at: www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/ [last accessed March 2013].

³²⁶ *Ibid.*, Emphasis added.

³²⁷ *R v O* [2008] EWCA Crim 2835.

also entails being “alert to the possibility” of trafficking and making enquiries with the investigating police officers in the case whilst utilising the UKHTC, NGOs and psychologists for information and advice.³²⁸

Knowledge of the Convention and Directive, the CPS Legal Guidance and an understanding of trafficking are the key prerequisites that enable the CPS to identify cases of trafficking. However, evidence gathered for this research suggests that awareness remains low and inadequate. A legal practitioner exemplified this problem:

“Last year, I prosecuted a case, which in fact involved cultivation in cannabis. Instruction simply on this case was that it involved a cannabis factory, the CPS didn’t think it had anything to do with human trafficking and what concerned me was talking to lawyers in the CPS, talking to caseworkers in the CPS, talking to the police, none of them in relation to this case seemed to have awareness of things like the NRM or indeed the Convention. I had to explain all of those things to them and how I thought in this case it was appropriate to make a referral because it seemed to me there was credible evidence that the defendant was themselves a victim of trafficking”.

Without adequate CPS training in applying trafficking indicators to a case file, trafficked persons are at risk of being criminalised. As discussed in Chapter 7, the CPS and instructed advocates seldom undergo training on trafficking to learn about the non-criminalisation provisions. Training would create a two-fold safety net, enabling the CPS caseworker to identify trafficking if the police do not. One participant stated the CPS caseworkers are the best placed actors to pick up trafficking indicators from a given case as they are specifically trained to analyse case facts and information. However, the CPS argues that sometimes the information needed to form suspicions is not readily available if the suspect gives a no comment police interview.

It is important to note that many trafficked persons need time to build trust to fully disclose information of their exploitation, due to the nature of trauma. Many trafficked persons who are arrested will receive representation from a duty solicitor who is allocated to their case. As it is likely that this will be the first time they have met their solicitor it may be difficult for them to tell their account in initial interviews. Also the police may not have disclosed all the evidence or concluded their enquiries and so the duty solicitor may instruct their client to say no comment until they understand the case against them.

To address these difficulties and advance the CPS’s proactivity obligation, it has been suggested that a more effective approach would be to apply trafficking profiling to certain scenarios of concern i.e. trafficking cases known to involve particular nationalities and compelled crimes, which would automatically cause the CPS to make additional enquiries and monitor the case. However, it is important for the CPS to remain vigilant to new and emerging trafficking trends and resulting typologies. Furthermore, it has been suggested that in no comment interviews, “in order to rebut any inference that the client has later falsified his account, solicitors should write a note of anything he says to them at the time and get him to sign it. If he makes a no comment interview and then gives evidence, you can produce the note at court as evidence of what he said earlier.”³²⁹

Police

If during an investigation the police identify indicators to suggest that a suspect may in fact be a trafficked person, they should halt the prosecution, offer to refer the potential victim to the NRM and make inquiries into the potential trafficking. This duty is outlined in *R v LM and others* where it was held, on examination of Article 10 of the Convention, that the police had a duty not only to advise the defendant’s solicitors about the availability of the NRM, but also, where necessary, to refer the defendant. The failure to meet this duty at this stage meant that the prosecution was not stayed.

³²⁸ *Legal Guidance, supra* note 325.

³²⁹ Baksi, C., *Going ‘no comment’: a delicate balancing act* (The Law Society, 24 May 2012) [online]. Available at: www.lawgazette.co.uk/blogs/blogs/news-blogs/going-no-comment-a-delicate-balancing-act [last accessed 21 March 2013].

However, unlike the CPS, there is currently no specific police guidance on this apart from the 2010 ACPO's *Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms*.³³⁰ This guidance requires an update to reflect developments in the past few years. However, even this limited resource, which focuses solely on children and cannabis, has not been widely circulated. In the absence of guidance, it can be difficult for individual officers and police forces to understand their duty with regards to non-criminalisation.

Good practice, extending the recommendations in the guidance to adults, was reported in a small number of police forces such as Bristol, where planned cannabis factory raids were carried out together with the NGO Unseen to assist in identifying potential victims of trafficking.

A recent study on trafficked women in prisons³³¹ raised additional issues such as the quality and access to interpreters both at time of arrest and at the police station; little opportunity for subsequent meetings to clarify information or examine "no comment" interviews; judgements on the autonomy of the victim-suspect; and inferences made from non or later disclosures. Also police are reportedly sometimes wary of trafficked victims who self-identify as this may be viewed as a ploy to enter a false defence to avoid culpability.

Furthermore, conflicting priorities (e.g. the so-called "war on drugs" versus combating trafficking) may further affect the willingness or ability to identify a trafficking scenario in favour of achieving quick positive prosecution for drug cultivation and petty crime etc. Indeed, the issue of trafficking is rarely incorporated in briefings given to police officers before drug raids. Such a focus on police performance based targets and detection figures, was confirmed by some interviewed law enforcement officers. They stated that their senior management, who knew what trafficking was, did not abandon a charge against a trafficked person for drug possession after a request from officers who were liaising with the trafficked person. The drugs had been previously introduced and addiction maintained by the trafficker to achieve control over the trafficked person. The officers stated that this reluctance could only be explained by the performance culture the police force works under.

Defence

Existing case law, such as *R v O* also places a duty on the defence: "[d]efence lawyers must respond by making enquiries, if there is before them credible material showing that they have a client who may have been the victim of trafficking, especially a young client."³³² However, the ATMG research also raised concerns about the lack of awareness of trafficking among defence solicitors and barristers to cite trafficking as a ground for an abuse of process application. The Law Society has issued the practice note *Criminal prosecutions of victims of trafficking*,³³³ though as with the CPS Guidance, awareness of this document amongst practitioners is also limited. Like other CJS actors, there are misconceptions among criminal lawyers with respect to the nature of trafficking and its definition, and awareness of the Convention. One participant commenting on a case incorrectly responded to stated:

"[The defence solicitor] looked into the issue of whether there was any issues of human trafficking but they had advised [the trafficked woman] that because she had the [travel] document actually in her possession [at the time of arrest] there wasn't anything that they could do for her, which was obviously wrong. So the [defence solicitor] had looked into [the trafficking] but they had just totally misinterpreted it, therefore they hadn't bothered to try and persuade the prosecution not to continue with the case."

³³⁰ Association of Chief Police Officers of England, Wales and Northern Ireland, *Position from ACPO Lead's on Child Protection and Cannabis Cultivation on Children and Young People Recovered in Cannabis Farms* (undated) [online]. Available at: www.ceop.police.uk/Documents/ceopdocs/externaldocs/160810_ACPO_lead's_position_on_CYP_recovered_from_cannabis_farms_FINAL.pdf [last accessed 13 March 2013].

³³¹ Hales, *supra* note 309.

³³² *R v O*, *supra* note 327, para.26.

³³³ The Law Society, *Criminal prosecutions of victims of trafficking*, 6 October 2011 [online] Available at: www.lawsociety.org.uk/advice/practice-notes/victims-of-trafficking/ [last accessed 25 March 2013].

In some cases concerns were even raised over poor legal practice. It was reported by interviewed participants that a lack of contact time and consistency of legal representatives affect rapport and trust building for full client disclosure. Many cases are handled by duty solicitors and advocates, who tend to advise clients to plead guilty on the basis that their evidence won't be believed, or that if they plead guilty they can present the exploitation to mitigate and reduce the final sentence. Indeed, the prison study observed in some cases, that acting in the best interests of such clients, defence advocates considered equations based on length in custody rather than proving that the crime was committed in extraordinary circumstances. As foreign trafficked persons were unlikely to receive bail on the basis of an increased risk of absconding, in some cases they would have spent all or most of their probable sentence on remand by the time of their court hearing. Therefore pleading guilty would result in less time spent in prison than a possible longer sentence if they plead not guilty and are convicted of an offence.³³⁴

Heavy workloads coupled with a lack of funding for cases requiring legal aid, as well as the time and effort required to prepare the case, were said to have acted as significant obstacles for a trafficked person to receive adequate representation. One legal practitioner described the situation:

"Take for example a simple document offence - possession of a false passport. Normally such a case involves several statements from several witnesses - up to, circa, 15 pages of evidence. If such a case is, after representations, discontinued, the fee received by the firm is in the order of £120. Now, to address the prosecution guidelines, the evidential and public interest tests, as well as source and provide third party evidence along with instructions from the individual concerned, takes many hours of work. ... At the current legal aid payment rates this can present as an unattractive proposition to a business. So one is left doing the work and making a substantial financial loss."

Some interviewed stakeholders suggested working with universities and the Law Society to embed trafficking knowledge into course modules and Legal Practice Courses to ensure that this information is engrained into future professional practice.

Crown Court and Magistrates' Judges

A judge may also raise their concerns that the suspect may in fact be a trafficked person. Whilst it was ascertained that awareness of trafficking has increased through prosecuting traffickers, the knowledge of trafficking for forced criminal activities is low among judges, particularly magistrates. In only two cases observed in a recent prison study did the judge halt the proceedings and ask for further assessments to be conducted.³³⁵ An interviewed recently retired judge, with over 22 years on the bench, recalled sentencing many of the Vietnamese cannabis cases. He stated that no Article 26 or trafficking arguments were made to stay the proceedings. Rather such arguments were made in mitigation and consisted around the individual playing a minor part in the organised crime group such as a gardener. Indeed, if the defence solicitor has advised their client to plead guilty the evidence of trafficking may not arise until sentencing. However, in the prison study, the researchers found poor judicial practice with one trafficked person being sentenced without the judge seeing the pre-sentence report beforehand.

In some instances the interviewed judge asked both prosecution and defence counsel if this case was appropriate to prosecute. However, he was told that they were following instructions from the CPS or their client. The interviewed judge also stated that judges could be more active in highlighting that the accused may be a trafficked person but may lack the confidence to do so or the knowledge that the defendant may be a trafficked person.

Participants also raised concerns over the 2012 initiative *Stop Delaying Justice!* This initiative, led by the judiciary in the magistrates' courts, is an attempt to expedite proceedings in contested trials i.e.

³³⁴ Hales, *supra* note 309.

³³⁵ *Ibid.*

where the defendant pleads not guilty. While this initiative may be useful in standard cases, the difficulties outlined in this chapter with regard to identifying trafficked persons who are prosecuted will only be exacerbated. Expedited procedures reduce the period in which traumatised trafficked persons may gain the trust of their legal representative and disclose their account for enquiries to be made to ascertain potential victim status. However, the complexity of trafficking cases sometimes demands longer time for such disclosures and enquiries.

Criminal Cases Review Commission

Recently the Criminal Cases Review Commission (CCRC) has taken an active role and interest in cases of criminalised trafficked persons, acting as another safety net. The CCRC is seeking to review such cases for possible miscarriages of justice and have already had a number of convictions quashed from cases referred. The common features of the cases that the CCRC is independently reviewing are: the trafficked person was prosecuted for offences such as not having a passport; they were advised to plead guilty; they were not advised of potential defences; and they were sentenced to terms of imprisonment. Annex IV reproduces the helpful leaflet the CCRC has produced which details how to apply and contact numbers for further information. The CCRC are also willing to review cases where the trafficked person has been removed, deported or left the UK voluntarily. Such applications may be made from the applicant's country of residence.

Conclusion

Four years of experience of this regime indicates that the current implementation of the obligations under Article 26, and now under Article 8 of the Directive, is deficient and does not guarantee victims their right not to be prosecuted and, in turn, see their trafficker investigated. While the UK has discretion as to the practical application of these obligations, policy as a vehicle for giving the Convention and Directive effect is problematic as despite the guidance and emerging case law there appears to be a significant disparity between commitment at the policy level and its practical implementation. The full responsibility, of whether or not to prosecute, invested in prosecutors has resulted in contradictions in practice. The ATMG found that the current regime allows for arbitrariness of decisions that lead to many victims being prosecuted, while their traffickers continue to enjoy impunity. Hence, it is questionable whether the UK, in implementing its discretionary policy, which so often leads to the prosecution of many victims, is fulfilling its obligations. The Convention and Directive establish a legal right of victims not to be prosecuted and/or punished for crimes with a nexus of compulsion to their trafficking. Perhaps it is time to consider a specific legal provision ensuring non-criminalisation of victims that can be applied without providing blanket immunity.

Recommendations:

- **Provide training to CPS caseworkers enabling them to identify trafficking indicators and appropriately respond to such cases.**
- **ACPO to issue guidance, without delay, on the treatment of suspects that may be trafficked persons.**
- **Implement the Convention and Directive provisions through legislation rather than policy and preferably include this provision as a specific section within a single Anti-Trafficking Act.**
- **Issue guidance for prisons on identification and treatment of prisoners who may be trafficked persons.**

Chapter 9: Prosecuting child trafficking³³⁶

In this chapter, the UK's criminal justice response to child trafficking will be examined. Children are trafficked for many purposes and from many countries. NRM statistics and the experience of practitioners suggest some prominent typologies include: Romanian children being trafficked for forced criminality, Vietnamese and Chinese children being trafficked for cannabis cultivation, West African children being trafficked for domestic servitude and sexual exploitation, and UK citizens trafficked internally for sexual exploitation. However, it is unknown exactly how many prosecutions and convictions there have been for these forms of child trafficking. This chapter will therefore discuss the barriers identified by practitioners that hinder prosecuting child traffickers, which include: a lack of specific legislation defining child trafficking; the low profile of child trafficking; a culture of disbelief among public bodies that children are trafficked; inadequate levels of identification; a lack of specialist knowledge across frontline services; and the impact of the criminal justice process on children.

Definitions and legal interpretations

Both Article 4(d) of the Convention and Article 2(6) of the Directive state that “child” shall mean any person under 18 years of age. Children represent a particularly vulnerable demographic.³³⁷ Due to their dependency on adults, children have little control over their environments and cannot easily escape harmful situations.³³⁸ This potentially places children at particular risk of trafficking from those who seek to exploit these vulnerabilities, and target children in the knowledge that they are easy to manipulate and control. Trafficked children are often those who have little or no social and/or family structures, live in poverty or have been victims of domestic or sexual abuse. Whilst children may be subjected to the same types of exploitation as adults, their inherent vulnerability makes them more susceptible to trafficking and less likely to disclose their abuse.

The definition of child trafficking differs from that of adults in that the “means” element of the offence (the use of force, coercion etc.) need not be present. If a child is brought (recruited, moved, transferred, harboured, etc.) to a place for the purpose of exploitation, this is sufficient to constitute child trafficking as defined in Article 3 of the Convention and Article 2(1) of the Directive (see Chapter 2). This simpler definition is designed to reflect the fact that children are inherently vulnerable to control even where force, violence or coercion are not present, and therefore they are unable to give informed consent. In theory, the narrower definition of child trafficking should make it simpler to apply, and potentially easier to recognise and evidence in criminal proceedings. However, low awareness of applying a different child trafficking definition when identifying trafficked children was found among frontline workers and legal professionals. This has impacted particularly on cases where the child is prosecuted for crimes they have been compelled to commit with a nexus to their trafficking (see Chapter 8). Judgements such as *R v N*; *R v LE*³³⁹ and information from interviewed practitioners, indicate that CJS actors require the evidencing of the “means” element i.e. coercion, in conclusively identifying the child as trafficked in non-criminalisation cases.

In the UK there is no specific offence of child trafficking as the SOA and AI(TC)A are used when prosecuting trafficking in children and adults. The SOA does not require the “means”, therefore this part appears to be in line with Article 4(d) of the Convention to demonstrate that a trafficking offence has occurred for children. This is also the same for the AI(TC)A, in which s.4.(4)(d)(ii) does not require that any “force, threats or deception designed to induce” (as in s.4(4)(c)) be present for child trafficking to be evidenced if the person in question is requested to undertake any activity having been chosen because they are “young”. However, there are other potential areas of confusion regarding the

³³⁶ This chapter was researched and written by Chloe Setter of ECPAT UK.

³³⁷ Finkelhor D., *Childhood victimization. Violence, crime and abuse in the lives of young people* (2008).

³³⁸ Tali G., *Child Victims and Restorative Justice: A Needs-Rights Model* (2011).

³³⁹ *R v N*; *R v LE* [2012] EWCA Crim 189

application of the UK's anti-trafficking legislation and the Convention. For instance the "act" element is rooted in child sexual offences in the SOA but not all of these offences interpret a child as persons below the age of 18.

In 2012, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) noted this irregularity among others: "In England, Wales and Northern Ireland, children are persons under the age of 18, however, pursuant to Sections 5 to 14 of the Sexual Offences Act (SOA) 2003 ... trafficking for the purpose of sexual exploitation includes offences against children defined as persons under 13 years of age or under 16, but mistaken by the offender to be older. GRETA also notes that Section 4(4)(d) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 refers to "young" persons without clearly designating children for the purposes of the Convention (i.e. persons under the age of 18)."³⁴⁰ This lack of clarity around the age of a child in UK law, as well as the use of the undefined word "young" in the AI(TC)A can cause confusion for those who are unfamiliar with the legalisation and are attempting to utilise it in child trafficking cases. It is for these reasons, coupled with other difficulties outlined in Chapter 2, that practitioners have looked to prosecute under related offences such as child cruelty or unlawful facilitation.

Statistics on child trafficking

There was a general consensus among interviewees that child trafficking has a lower profile, is not as visible and as well documented as adult trafficking, which may partially account for the lower number of prosecutions. One law enforcement officer stated:

"The profile of trafficking of children isn't as high as the trafficking of adults ... People don't like to think that children are trafficked. So, it's almost like wilful blindness, they don't want to think that it happens."

Child trafficking statistics are a key indicator to assess the effectiveness of the UK's CJS response to child trafficking. Accurate and reliable data on how many children are trafficked into, within and out of the UK, is needed in order to debunk the myth that child trafficking is uncommon. Between April 2009 and June 2012, 784 children were referred to the NRM as potential victims of trafficking. However, a recent UKHTC report identified 489 child victims in 2011 alone when it collated data from a variety of sources, including the NRM and other stakeholders (this figure only represents those who received positive Reasonable or Conclusive Grounds decisions).³⁴¹

This number is likely to be much higher in reality as the UKHTC study did not collate data from local authority children's services. Despite these high numbers, there have been a total of 49 convictions (for both adults and children) under all trafficking legislation since 2009. Unfortunately, the data for convictions is not disaggregated into adults and minors. Therefore, it is unknown how many prosecutions were for child trafficking and it is therefore difficult to analyse whether the UK's criminal justice response to trafficked children differs significantly from adults. It was, however, agreed by the majority of interviewed stakeholders that few offenders are being brought to justice for trafficking offences against children, which may send out a message that child trafficking is a low-risk, high-profit crime.

Once a child has been identified as a suspected victim of trafficking, government guidance promotes referral to the NRM as required by Article 10 of the Convention.³⁴² Referring a child into the NRM may have a positive impact as it encourages the sharing of information between agencies and can help to ensure an appropriate safeguarding response. NRM statistics can also identify patterns in child trafficking that can aid law enforcement investigations and lead to better evidence gathering.

³⁴⁰ GRETA, *supra* note 87, p.25.

³⁴¹ SOCA, *supra* note 19.

³⁴² Association of Chief Police Officers, *supra* note 330.

However, many children are not referred to the NRM by law enforcement or local authorities, despite identification as potential victims of trafficking. This can occur for a number of reasons, including: a lack of awareness of the NRM; authorities failing to see the benefits for children; or a fear that negative NRM decisions will impact on the children's immigration status. In addition, this research suggests that there is reluctance to utilise the London Safeguarding Children Board's (LSCB) *Trafficking Toolkit*³⁴³ and *Practice Guidance*,³⁴⁴ which encourages frontline staff to refer trafficked children to the NRM.³⁴⁵

Identification

Early and effective identification of child victims of trafficking is critical to securing an investigation and prosecution. However, there are many barriers to identifying trafficked children on the frontline as children generally do not report crime to the authorities, especially against family members who may have been complicit in their trafficking. This is a particular issue where children have experience of law enforcement corruption with bias towards children. Children may also be more trusting and controllable, thus trafficked children may not see themselves as victims in need of assistance.³⁴⁶ It is for these reasons that the Convention obliges frontline competent authorities to be proactive in identifying trafficked children.

However, such proactivity appears to be lacking. This is demonstrated by the account of a young person interviewed for this research who was trafficked into domestic servitude at the age of 12. She describes her experience of the police:

"[The police] came but it was my madam's husband that open the door ... he was telling the police that she is my eldest daughter. I was crying and I said 'take me with you, don't leave me with him.' They said they couldn't because he was my father. They said 'what is her date of birth?' He said, 'I don't know, it's my wife that do those sort of things, we men are rubbish'. So they still leave me with him. I was thinking that madam was doing some juju [see Chapter 1] because this man was lying and they still leave me. I think that I am finished."

She added in relation to the social workers who also visited her:

"The social worker came about the [other] kids. He [the trafficker] said I should tell woman I am wife's younger sister. But they didn't ask for me. They checked all around the house but didn't come to my room. I saw her leaving from my window. You can't open my room, they seal it like a cage My madam come back and she says no one will ever ask for me again."

Good practice - *R v Lucy Adeniji*³⁴⁷

Traffickers may seek to conceal the exploitative relationship with the trafficked child by misrepresenting the child as a family member. Children may be trained to refer to the trafficker as "mum", "dad", "auntie" etc. which may be accepted without question by identifying agencies. One of the most important lessons learnt from specialised police agencies is that of utilising techniques, such as DNA profiling and the examination of birth certificates, to ascertain familial relationships between the child and suspect. This can lead to significant corroborative evidence to prove the trafficker's exploitative relationship with the child. The case of *R v Lucy Adeniji* involved a Nigerian pastor who brought two girls and one boy to the UK for the purposes of domestic servitude. The defendant claimed that she and all of her dependents were British nationals. Once the birth certificates were

³⁴³ London Safeguarding Children Board, *London Safeguarding Trafficked Children Guidance* (March 2011)

³⁴⁴ London Safeguarding Children Board, *London Safeguarding Trafficked Children Toolkit 2011* (March 2011)

³⁴⁵ Other individual counties have also since implemented their own toolkits.

³⁴⁶ See ECPAT UK Child Trafficking: A Snapshot (2010).

³⁴⁷ *Adeniji*, *supra* note 275.

examined, initial suspicions arose as to how they had been obtained as the alleged father's nationality, which was named on all, was not consistent. It further transpired that the defendant had obtained her British passport using a third party's birth certificate. The defendant was able to obtain further British passports for two of the trafficked children by claiming them as her children. This led to the defendant entering guilty pleas on the offences of obtaining false passports and unlawful assistance into the UK, as well as supporting a conviction for child cruelty.

Trust between the trafficked child and CJS actors is seen by the majority of interviewed stakeholders as imperative to enabling the child to disclose their experiences resulting in the identification of the trafficked child - one law enforcement officer stated: "*The first point of contact can be make or break with a child victim.*" The reaction of practitioners to the child and whether the child feels safe and in a protective environment³⁴⁸ also affects the child's ability to disclose their experiences. If these conditions are not met this can have significant ramifications on evidence gathering for a criminal trafficking investigation.

Despite pockets of good practice across the UK, there remains a culture of disbelief among frontline practitioners when listening to children's disclosures.³⁴⁹ It was noted that agencies, in particular UKBA staff, neglected this duty in their dealings with unaccompanied asylum-seeking children; some of whom may be potential victims of trafficking.³⁵⁰ There is widespread cross-sector concern that non-UK child victims of trafficking are seen as immigrants first, and children (or even victims of crime) second. Conversely, research for this report raises concerns that children trafficked from Romania, an EU member, are slipping under the radar because they are less likely to have immigration issues. This may be due to a lack of awareness and training around the issue, but there is also concern by respondents that children with irregular migration status in the UK are not prioritised by local authorities, particularly in the face of up to 40% budget cuts.³⁵¹

Such attitudes and approaches run contrary to Article 12 of the UN Convention on the Rights of the Child (UNCRC), which encourages authorities to listen to the voice of the child and "to have that opinion taken into account in any matter or procedure affecting the child". Additionally, Article 2 of the UNCRC states that "[p]arties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." Thus giving priority treatment to British nationals runs counter to Article 2, which clearly denotes that all children should be treated as equal.

The LSCB's *Trafficking Toolkit and Practice Guidance* mentioned above, highlights to law enforcement the child protection procedures used by local authorities and underscores the fact that child trafficking is a child protection issue. The ATMG recommends the implementation of this toolkit and guidance, and that it is promoted and necessitated at all levels in order to improve the identification of victims and facilitate the prosecution of traffickers.

Internal child trafficking

When a child is trafficked within a country, this is defined as internal trafficking. In the UK both foreign and British national children are victims of internal trafficking. According to the Child Exploitation and Online Protection Centre (CEOP), the profile of UK children being trafficked is recognised as a much broader problem of child sexual exploitation that has only recently been labelled "internal

³⁴⁸ See *European Convention*, *supra* note 15, Article 5.5.

³⁴⁹ Children's Society *Into the unknown: Children's journeys through the asylum process* (2012).

³⁵⁰ *Ibid.*

³⁵¹ Ramesh, R., 'Social care services for children face cuts of 40%, warns charity' *The Guardian*. 15 November 2011. Available at: www.guardian.co.uk/society/2011/nov/15/social-care-children-40-percent-cut.

trafficking”.³⁵² It states: “Whereas this helps to bring more focus to a previously underestimated problem, this new categorisation as trafficking leads to confusion in the UK context ... by making a distinction between those who are moved and those who are not, an arbitrary focus on the transportation part of the problem rather than the actual abuse is caused.”³⁵³ Practitioners report that this lack of clarity around the definition of internal trafficking is confusing and misleading.

It became apparent from the research that internal trafficking for other types of exploitation as well as for foreign children is a concern. In particular, interviewed stakeholders reported Vietnamese boys disappearing from local authority care and later discovered in cannabis farms in other parts of the UK. Much of the existing research around internal trafficking has focused on sexual exploitation of British children with high levels of media coverage in the past year on this homegrown issue, particularly in relation to Operation Span (2012 – see below), Bullfinch (2011), Retriever (2010), Chalice (2010) Glover (2008), and recently *R v Surin Uddin, Mohammed Sheikh and Hamza Alia*.³⁵⁴ However, reporting and public awareness of cases of internal trafficking of foreign children is still very low. Most worryingly, there were no reported cases of prosecutions (under trafficking legislation) against those trafficking Vietnamese children for cannabis cultivation, suggesting that this type of trafficker is acting with impunity. All types of internal trafficking are types of exploitation and must be addressed within an effective criminal justice response to trafficking. A clarification on internal child trafficking may, in turn, result in improved identification, investigation and prosecution.

Age assessments and interplay with the CJS

Many children trafficked to the UK arrive on false documents. This makes determining their age very difficult. Furthermore, trafficked children encounter various issues relating to their age: some have been in the UK for long periods of time and do not know how old they are, and some are told to say they are adults in order to cross borders more easily and to attract less attention. These children will often adhere to the story given to them by their trafficker. Some children may not understand the importance placed on age as in their country of origin it is not significant and/or not recorded officially. However, practitioners highlighted a culture of disbelief among UKBA staff, social workers and law enforcement, some of whom believe children lie about their age in order to access extra support or to improve their asylum claim, resulting in them being determined as adults and processed as such.

Article 10.3 of the Convention and the Recital (para 22) of the Directive state that: “When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.” Therefore adhering to this principle should mean that children are, without delay, given access to support via the local authority. If a child is misidentified and prosecuted instead, this adversely affects their ability to access support services. Also, if a child is wrongly assessed to be an adult, the treatment and support they receive will be vastly different. For example, one child trafficked, aged 15, stated:

“They asked my age and I told the age the woman gave me but I said this wasn’t my real age. But they believed I was 22. They said: “Okay, we are going to find you somewhere for you to stay.” That was Friday and they said they couldn’t find anything until Monday, so I stayed in a hotel.”

If a child is wrongly age assessed the child could be placed in adult or unsupervised accommodation. They may receive no direct support from a social worker and be at risk of further harm and re-trafficking. Furthermore, the child’s credibility can be damaged during criminal proceedings against their trafficker, if the defence counsel presents contested age assessments to damage the child’s testimony.

³⁵² CEOP, Strategic Threat Assessment: Child Trafficking in the UK (2009).

³⁵³ Ibid

³⁵⁴ *R v Uddin and others* at Norwich Crown Court, 27 February 2013.

Many practitioners expressed concerns over the Merton Compliant age assessments³⁵⁵ carried out subjectively by the local authority, particularly in borderline cases. The assessment consists of a social worker assessing their *credibility*, an over-reliance on physical appearance and behaviour including their general background, ethnic and cultural considerations, family circumstances, education and history over the past few years. This fails to take into account factors such as variation among cultures and ethnicities. There is no current statutory guidance on age assessments, therefore practitioners must rely on an ensemble of case law and expert guidance. One service provider stated: “There are quite a few cases where it’s not perhaps convenient for services to acknowledge that they might be dealing with a victim of trafficking and this happens in cases of children who are age disputed.” Where resources are scarce finding borderline cases to be adults may be seen as an option to reduce costs. Those victims who are assessed to be adults and not children are still entitled to be treated as trafficked persons and given appropriate support. However, it is widely known that UKBA NRM decisions heavily rely on credibility. Where a child is documented as an adult on a flawed age assessment, this diminishes credibility and directly affects NRM decisions and subsequent access to support services.

The former Children's Commissioner for England, Sir Anselm Green concluded that a combined approach in accessing age is required: “Multi-professional assessment involving social workers, educationalists, paediatricians and psychologists ... would seem to be a pragmatic way forward in order to obtain a consensus decision on age”.³⁵⁶ Experts have argued for a more objective and scientific criteria: “a multi-disciplined approach, is more likely to increase accuracy and safety of results, reducing the risk of appeals and making the process more efficient.”³⁵⁷ Failing that, some legal professionals argue that child victims of trafficking should receive a specific status in the UK that would help to create a “durable solution”³⁵⁸ for the child, assist cooperation in police inquiries and reduce the current reliance on issuing 12-month residence permits for under 18s.

Investigating child trafficking

As discussed earlier in this report, the UK has a duty to investigate trafficking offences under Article 4 of the ECHR, as it was held in *OOO & Others v Commissioner of Police for the Metropolis*. Clearly OOO obliges police to investigate all forms of trafficking whether involving adults or children. However, the 2011 monitoring and evaluation of the LSCB’s *Toolkit and Guidance*, found that police engagement with Children’s Services on suspected trafficking cases varied across boroughs: “many pilot local authorities find it difficult to fully engage police in trafficking cases and get them to act on suspicions, even where the risk indicators matrix is used. The willingness of the police to accept some forms of exploitation as [a] trafficking crime (e.g. domestic servitude or benefit fraud) has been inconsistent in some areas and can depend on the officer involved.”³⁵⁹

In practice, once a child has been identified as a possible victim of trafficking by the local authority, relevant information should be referred to the police immediately under s.47 of the Children Act 1989 as the child is at risk of significant harm. However, information sharing between these two agencies was found to be lacking, thus limiting the pool of potential cases that the police can investigate or the information gathered that could aid an investigation. This may be due to distrust between agencies or a lack of internal information sharing protocols. If the LSCB’s *Toolkit and Guidance* were to become statutory, there would be improved sharing of information between local authorities and police that could assist criminal investigations.

³⁵⁵ Merton Council (B v London Borough of Merton [2003] EWHC 1689 (Admin)).

³⁵⁶ Professor Sir Al Aynsley-Green Kt, *The assessment of age in undocumented migrants*, p.12, A report for the Office of the Defensor del Pueblo, Madrid Spain, March 2011.

³⁵⁷ Gray, A., ‘Age Assessment of Undocumented Migrants in the UK and Best Interest of the Child’ *Oxford Monitor of Forced Migration* Vol.1:2, pp.29-32.

³⁵⁸ *EU Directive*, supra note 16, Article 16(2).

³⁵⁹ London Safeguarding Children Board, *Final monitoring report: Local authority pilots of the London Safeguarding Trafficked Children guidance and toolkit* (February 2011).

Previous research has found that the key to the success of trafficking prosecutions is the involvement and cooperation of trafficked persons as witnesses.³⁶⁰ However, an emphasis on victim testimony can place undue pressure on the child or young person to testify. The impact and enormity of this decision and its future implications should be explained clearly to the child. Leading from this may be a tendency for law enforcement to prioritise cases where the child victim is willing to testify in the knowledge that they will more readily be accepted by the CPS.

Conversely, the research indicated that in circumstances where trafficked children want to participate in criminal proceedings, many child trafficking prosecutions are not taken forward because it is believed by practitioners, such as social workers, not to be in the child's best interests to do so. Article 12 of the UNCRC gives prominence to the child's right to express their views freely in all matters affecting them. In this instance, it is useful for practitioners to utilise the principle of Gillick competency, which states: "... whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent."³⁶¹ However, Article 3 of the UNCRC states that "the best interests of the child shall be a primary consideration in all actions affecting children". It is therefore recommended that any decision not to prosecute a trafficker or involve a young person in the criminal proceedings must be taken in a multi-agency setting that considers the child's best interests in both the short and long term. Any evidence or testimony collected should be preserved in case this situation changes over time.

Good practice and other issues - Operation Quartzire³⁶²

The case is regarded, by many, as a policing success, particularly as it demonstrates good practice in overcoming difficulties in responding to traumatised trafficked children during a criminal investigation. It also demonstrates an effective multi-agency approach between two police forces, UKBA investigation team, the UKBA immigration and NRM officer, the Local authority, and a specialised NGO. Throughout the case, the police did not inform each victim of the other's existence in order not to contaminate the evidence. Though there was a strong evidential package (see Chapter 5), the oral testimony of the trafficked children during the trial was thought crucial to its success.

Gaining trust between the authorities and the trafficked children was the main challenge. For more than one year, the police and social services worked with the trafficked children to develop the degree of trust required for them to be debriefed and disclose details of their experience. The police remained in consistent contact and built an effective relationship over this period. Their experience of investigating organised criminal groups and responding to vulnerable victims was vital.

The use of Juju (see Chapter 1) in UK trafficking cases was a relatively new concept for the police at that time. Many were unconvinced to its plausibility as a control method. In this case, the police dedicated time to educate themselves about Juju and its effects in order to comprehend the victims' experiences and understand the victims' behaviour. The knowledge they acquired fed into the prosecution's learning but also further developed trust between the officer and victims.

After these considerable efforts, the victims began to feel safe and settled in the UK and were comfortable enough for the truth to begin to emerge. Initially, Victim 1 had been unable to fully disclose due to her fear of Juju and trauma suffered (see Chapter 1), therefore she recited the "legend" that was prepared for her by the traffickers. Consequently, after building a strong relationship

³⁶⁰ Laczko F. And Gramegna M., *Developing Better Indicators of Human Trafficking* (2003)

³⁶¹ Children's Legal Centre, *Landmark decision for children's rights* (1985).

³⁶² *Hassan, supra* note 245.

with the investigating officer, she assisted the police in confirming where she had been held and gave evidence in the trial.

Victim 2, first thought to be a member of the trafficking network and initially age assessed as 24 as per the age on the false travel document, was detained in an adult prison. Questions emerged over whether the local authority had correctly conducted the age-assessment interview, as it was carried out by an unsuitable interpreter. The assessment was challenged by the investigating officer, along with a specialist NGO, resulting in a revision of her age to 14.

Deficiencies of the NRM came to light in this case. The investigating officer admitted he had not referred Victim 1 until a year after she came to his attention, as initially she would not disclose the truth about her experience, and continued to recite the “legend” she had been coached to say. The officer believed this would result in an unsuccessful NRM referral so the officer waited for firmer evidence.

Barriers to investigation

Children’s claims are not always taken seriously, and on occasion children were informed that no evidence was available to take their allegations forward. This research also raised concerns that many police staff are insufficiently trained in understanding the difficulties children have in disclosing their experiences, such as: the tendency to relay their experiences inconsistently and the specific way that children present information in relation to their experiences, which is acknowledged in key policy around children.³⁶³ Compounding such issues are concerns in respect of using interpreters who are not specifically trained in interpreting for children, and the potential adverse impact of this on the evidence gathered during an interview. Practitioners should be aware of the cultural implications for children talking to adults (i.e. age, gender, caste, etc.). Also, family members, or those claiming to be, should not be used to interpret, as they may be involved in the trafficking process.³⁶⁴

Moreover, some police do not understand why children do not make their allegations at an earlier opportunity. The ATMG’s research has shown that at the time of identification, some children do not want to participate in criminal proceedings but may change their minds at later stage, once they feel safe and settled. This is recognised by Article 9(2) of the Directive, which states that the UK should enable “the prosecution of an offence ... for a sufficient period of time after the victim has reached the age of majority”. This is particularly important, as children will take varying amounts of time to disclose or to be sufficiently prepared, emotionally and physically, to take part in criminal proceedings. Allowing sufficient time for children to feel able to disclose, may make police investigations more difficult as past allegations are particularly difficult to investigate, as they may rely mainly on the testimony of the trafficked child. However, historic cases of trafficking must nevertheless be thoroughly investigated when allegations are made. This may also lead to the identification of other trafficked children who are still being exploited. As stated in *OOO*, the police are obliged to investigate all cases of trafficking, no matter when the offence took place. Furthermore, there is no statute of limitation on the crime of trafficking, meaning that there is no maximum time after the event that legal proceedings, based on that event, may be initiated.

Multi-agency partnerships and child specialism

Stakeholders interviewed widely shared the opinion that multi-agency working is a prerequisite at both intelligence and operational levels. MASH (Multi-Agency Safeguarding Hubs) need to be fully utilised to make decisions about how to safeguard children. This is vital in securing the protection of trafficked

³⁶³ UKBA, *Guidance for the Competent Authorities*. Available at: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary [last accessed 1 June 2013].

³⁶⁴ *Ibid.*, p.6.

children as well as assisting in prosecutions. The multi-agency approach can also help reduce the number of times the trafficked child has to disclose their ordeal, which can in itself be very traumatic. Multiple assessments can confuse a child and lead to only partial disclosure in line with the focus of the assessment. Inconsistencies can also lead agencies to disbelieve the child.³⁶⁵ Therefore, more streamlined, holistic, multi-agency interviews should be utilised to gain better evidence and to reduce the risk of re-traumatisation.

Good practice - Paladin Team

In 2003, the MPS established a child safeguarding team - Paladin, based at Heathrow Airport. This multi-agency team, comprised of police and the UKBA, was tasked to “disrupt all forms of child abuse particularly child trafficking throughout London ports”.³⁶⁶ It aimed to be a good practice model for other ports across the UK.³⁶⁷ Paladin is frequently cited as a good example of effective multi-agency working to tackle child trafficking in the capital. The effectiveness of the team essentially lies in its members working in the same office. This allows for the quick exchange of information and the cultivation of working relationships and practices.

The Paladin Team works very closely with its local authority, Hillingdon. When cases are picked up at Heathrow Airport, the local authority social workers work alongside Paladin to support interviews and provide safe accommodation. They also regularly meet to share information and learn from each other. Paladin’s successful prosecutions include *R v Peace Sandberg*,³⁶⁸ *R v Ernestina and Samuel Quainoo*³⁶⁹ and *R v Lucy Adeniji*.³⁷⁰ However, Paladin is limited to covering London’s ports. Law enforcement interviewed for this research claim that there needs to be a Paladin-style dedicated trafficking team at all main ports in the UK to raise awareness, keep children safe and improve prosecution rates by building on their previous experience in successful cases.

Operation Newbridge, by Sussex Police, works in a similar fashion to Paladin and focuses on profiling children entering the UK via Gatwick Airport.

Professionals interviewed by the ATMG reported that many teams tasked with child protection and investigating child abuse across the UK are specialists when dealing with traditional child protection issues, such as abuse within the family, but lack specific knowledge of trafficking and of dealing with investigations of organised criminal networks. One law enforcement officer stated: “*Child trafficking is not on our child protection team’s list of things to deal with.*” Alternatively, those officers who are trained in trafficking may often not have the child focus required or any specialist experience of working with children.

Although teams such as Paladin have proved effective in both identification and subsequent investigations, it is important to note that not all child victims of trafficking will come to the attention of authorities at their respective ports of entry – many pass through unnoticed, some enter on forged or someone else’s passports. Some are already present in the UK, or have the legal right to enter and remain or are British. All police forces and other agencies need training to recognise child trafficking, not just those at ports of entry.

³⁶⁵ Final monitoring report: Local authority pilots of the London Safeguarding Trafficked Children guidance and toolkit (2011)

³⁶⁶ Child Migration & trafficking to the UK. Available at:

www.londonscb.gov.uk/files/resources/cpp/Police%20trafficking%20presentation.ppt.

³⁶⁷ Paladin child: the safeguarding children strand of Maxim funded by Reflex: a partnership study of child migration to the UK via Heathrow Airport (2008).

³⁶⁸ *R v Peace Sandberg* at Isleworth Crown Court, 16 May 2008.

³⁶⁹ *R v Ernestina and Samuel Quainoo* at Isleworth Crown Court, 11 July 2008.

³⁷⁰ *Adenij*, *supra* note 275.

Working with private partners - *R v Jamali, Hagnegat, Bordbar and Gholampour*

Intelligence from the public and business can be crucial where knowledge of child trafficking is lacking among frontline officials. NGO initiatives, such as The Code,³⁷¹ and specialist trafficking police units have connected with private entities to raise awareness of trafficking, with a view to opening alternative channels of intelligence gathering. One example of this can be found in *R v Jamali, Hagnegat, Bordbar, and Gholampour*,³⁷² which involved four Iranian nationals who attempted to sell the virginity of girls at the Jumeirah Carlton Hotel, in Knightsbridge, London. A handwritten letter was left at the hotel detailing the availability of 12 girls aged between 14 and 20 years. Hotel staff forwarded the letter to the MPS and a covert operation was initiated involving a Farsi-speaking police officer acting as a potential client. Communication was made with the group and photographs of the girls were exchanged with the police before a meeting was arranged at a different hotel. When Jamali and Hagnegat arrived with six girls they were arrested. Owing to the vigilance of staff acting on prior awareness of child trafficking, they were able to assist in intelligence gathering for this investigation. This case also highlights the need to use police from the same cultural background to effectively infiltrate trafficking networks.

At Harrow Crown Court all four pleaded guilty to conspiracy to traffick six women aged between 17 and 22 years for sexual exploitation. Jamali and Hagnegat also admitted conspiracy to incite prostitution for gain. The instigator, Jamali, was sentenced to two years and nine months. Hagnegat to two years and six months, Bordbar to two years and three month, and Gholampour to two years and nine months. A charge of conspiracy to arrange child prostitution lies on the files of all four.

The low sentences reflect the fact that the exploitation had not yet taken place. Although the photograph of a 14 year old to “entice” clients was viewed as an aggravating factor, the sentencing does not appear to have taken into account that one of the victims was only 17 years old. Article 24.b of the Convention states that child trafficking is considered an aggravating circumstance. This is also reflected in the sentencing guidelines issued by the Sentencing Council for England and Wales.³⁷³ This demonstrates that there are still inconsistencies on the UK’s adherence to recognising the internationally agreed definition of a child.

In November 2012, the Government stated that it was working in partnership with several agencies to “improve national and local understanding of the different local multi-agency models in place to support information sharing around safeguarding response for vulnerable people”,³⁷⁴ which included trafficked children. However, the tried and tested *Working Together to Safeguard Children*³⁷⁵ document coming into effect from 15 April 2013, has been reduced from 400 pages to 84, and removes chapters on training and working with children in specific circumstances, such as sexual exploitation and trafficking. The ATMG believes that this will have a negative impact on multi-agency working. The proposed revision removes all reference to the investigation of organised or institutional abuse. The Government should review this decision and acknowledge the success of Paladin and Newbridge which demonstrate the urgent need for multi-agency working on child trafficking. Delays to this approach will continue to expose children to the risk of harm, re-trafficking and going missing from care, and, in turn, the likelihood of a successful prosecution.

³⁷¹ The Code is an industry-driven, multi-stakeholder initiative with the mission to provide awareness, tools and support to the tourism industry in order to combat the sexual exploitation of children in contexts related to travel and tourism. See: www.thecode.org.

³⁷² *R v Jamali and others* at Harrow Crown Court, 10 September 2010.

³⁷³ GRETA, *supra* note 87.

³⁷⁴ Hansard, HC Deb, 13 November 2012, c129W.

³⁷⁵ *Sentencing Guidelines Council*, *supra* note 258.

Child trafficking training

There is no mandatory training for frontline police who are often the first to come into contact with trafficked children in criminal operation raids. For example, an interviewed law enforcement officer stated: *“It’s very rare that an [officer in CID] is going to come across a victim directly, first time. It’s going to be a uniformed colleague or a PCSO or a station reception officer”*. As a result children may be treated as criminals instead of victims and not given the support or protection they require. Also, the opportunity to investigate and ultimately prosecute cases of trafficking is therefore lost.

Furthermore, there is no mandatory training for social workers, health or education professionals on child trafficking in the UK. There is, however, non-statutory guidance in Department of Education and the Home Office’s *Safeguarding Children who may have been Trafficked*.³⁷⁶ This document supplements *Working Together to Safeguard Children*.³⁷⁷ This practice guidance is designed to help practitioners who come into contact with children to identify and safeguard potential child victims of trafficking. It states: *“All practitioners who come into contact with children in their everyday work need to be able to recognise children who have been trafficked and be competent to act and support and protect these children from harm.”*³⁷⁸ In addition, the Government states: *“Local authorities have a responsibility to ensure that all staff working, or in contact with children and families participate regularly in relevant training tailored towards their individual roles. In addition, Local Safeguarding Children Boards (LSCBs) should ensure that local training programs for practitioners and other professionals cover trafficking issues as appropriate.”*³⁷⁹ However, this wording is vague and gives no indication of how this training is to be provided, resourced, updated or evaluated in the context of the local authority’s response to child trafficking. Pockets of good practice do exist among local authorities in the UK, with some implementing and developing good practice guidance, as well as commissioning NGOs to train their staff annually.

NGOs have helped plug this gap by providing specialist-training courses for those who come into regular contact with children, such as social workers and police to equip them to recognise indicators of trafficking and know how to respond. For example, ECPAT UK has provided training across the UK for those working with children for over five years, offering introductory and advanced courses, as well as more specialist training on Juju and witchcraft, investigating trafficking and providing safe accommodation. However, despite NGOs trying to fill the void in training, the present situation is inadequate, and reduces the likelihood of successful police investigations and prosecutions. Whilst acknowledging that the police currently face budgetary cuts which are affecting their ability to provide specialist child trafficking training to all frontline staff, there is a need for mandatory basic training for all police officers, so that they can refer suspicions of trafficking to experienced “lead experts” in the force to investigate further.

Support and protection during criminal proceedings

Emerging from the research, one of the key influencing factors in an investigation and criminal trial is the protection and support of child victims whose needs are heightened during these processes. The support provided to child victims of trafficking in investigations and criminal proceedings was regarded by those interviewed as being the responsibility of the local authority. However, it is often the police and/or social workers who provide support to trafficked children. A common problem cited is that trafficked children are placed in inappropriate accommodation such as hotels and Bed & Breakfasts and inadequate safety procedures are in place which results in the continuance of children going missing from local authority care and possibly being re-trafficked. Where victims are under the control of the trafficker, inappropriate placements increase the risk that a trafficked child will contact the

³⁷⁶ Department of Education, *Safeguarding children who may have been trafficked - Practice guidance* (October 2011).

³⁷⁷ HM Government, *Working Together to Safeguard Children. A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children* (Updated version published March 2010).

³⁷⁸ *Department of Education, supra* note 376, p.21.

³⁷⁹ *Home Office, supra* note 48, p.66.

trafficker, where they have no sturdy and constant support structure in place. Clearly, if a child goes missing, the likelihood of a successful prosecution in such cases diminishes.

Article 28.3 of the Convention specifies that, in the context of police investigations and legal proceedings (such as trials and pre-trial hearings), trafficked children acting as witnesses, “shall be afforded special protection measures taking into account the best interests of the child”. In addition, Article 15(3) of the Directive clearly outlines the UK’s responsibility when working with trafficked children in criminal proceedings:

“Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
- (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
- (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
- (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child’s choice, unless a reasoned decision has been made to the contrary in respect of that person.”

This research has identified that, on the whole, trafficked children are afforded special measures when appearing in court (where such are available) and the correct Achieving Best Evidence (ABE) procedures are followed during interviews. Nevertheless, concern was raised about children having to make multiple disclosures; the lack of a legal guardian to accompany the child (see below); and a lack of child-specific trafficking training for police (see above).

Despite evidence of good practice in police interviews, the adversarial nature of the UK court system with an emphasis on victim testimony prevails, leaving victims exposed to intense cross-examination and the reliving of past trauma. It is acknowledged that the risk of harm to a child in giving oral evidence is an “ever present feature”³⁸⁰ that the court should take into account. For all children, a court appearance is likely to be stressful, intimidating and sometimes distressing.³⁸¹ In particular, concern was documented over trials where there are multiple victims abused by groups of men charged with sexual offences. In these instances, all of the individual suspects’ barristers have a right to cross examine the child victims and may question the child’s background where these questions can be indirectly asked if it is pivotal for the defence’s case. An interviewed practitioner described the situation:

“The general adversarial system as it stands in our courts today gives little support to the child giving evidence against a group of perpetrators. There are, of course, special measures that can be invoked, but there are plenty of horror stories that outweigh this ... In a case in West Mercia a child victim was cross-examined for 14 days by a number of barristers ... In Derby, a 14-year-old girl was cross-examined by seven barristers over eight days, causing such great distress that her evidence had to be withdrawn.”

Because of this adverse impact on children who testify, stakeholders suggest that victimless prosecutions in the context of child trafficking cases should be examined as a matter of urgency to increase successful prosecutions. Victimless prosecutions under other offences are warranted if it

³⁸⁰ See *Re W (Children)* [2010] UKSC, para. 26.

³⁸¹ *Ibid.*

were too traumatic to involve them initially or at any stage. This approach requires more resources for police to use other investigatory tools to build the scaffolding of a strong case without the need for the child to testify.

Furthermore, concern was raised about the lack of understanding of control methods applied in the child trafficking context, as one interviewed child trafficking expert stated:

“One of the great barriers to successful prosecutions is the almost total ignorance of the control methods used by the traffickers and the physical and psychological effects that the prolonged exposure to these controls has on children”.

It is therefore argued that the public and legal professionals can be assisted by the use of expert witnesses in court. As one practitioner asserted: *“Without an expert witness to deliver his or her knowledge to the court, children’s behaviour is often put down to delinquency, exploring sexuality or just plain badness.”* Furthermore, defendants frequently raise cultural relativism arguments in child trafficking trials which, if not addressed, may provide a smoke screen, where jurors do not fully understand a culture which is alien to theirs.

*R v Ernestina and Samuel Quainoo*³⁸² concerned a Ghanaian couple who trafficked a young child for domestic servitude. They pleaded guilty to assisting unlawful entry to the UK under the Immigration Act 1971, with the caveat that the facilitation was for a family member as the child in question had been essentially adopted as part of a customary practice in Ghana. This is regarded as less serious and should reduce the sentence. The defendants therefore argued that the services provided were carried out as household chores as she was effectively their daughter. The court held that it was unnecessary to consider the victim’s evidence on her treatment as the court had to direct its mind to the question “for what purpose did these defendants arrange for [her] to enter the United Kingdom?” Therefore regard was given to the true nature of the relationship of the defendants to the girl – a servant or member of the family. On this basis the court disbelieved the defendants’ account, finding that at the beginning of the relationship and at the time of entry into the UK, it was one of employment owing to an agreement of employment and wages paid to the girl’s natural mother. Furthermore, it was held that the customary adoption had no legal basis in the UK or in Ghana.

It was also found during this research that after an investigation and trial, children are very vulnerable and require high levels of emotional support. Those who disclose and go through a criminal investigation are often further traumatised by the CJS and may not experience a sense of justice and closure following their involvement.³⁸³ One service provider stated:

“If they have spent a long time talking to the police, which is very distressing for them and they have to disclose a lot of very difficult things, and then there is no prosecution, they [child victims] feel very let down by the whole process, by the huge amount of hours spent that came to absolutely nothing.”

Therefore, it is vital that children are properly supported throughout any investigation, as well as after the trial, if the chances of securing a successful prosecution are to be maximised. One trafficked child, trafficked aged 14 for sexual exploitation, stated:

“I am happy he [the trafficker] is now in prison but I am still afraid because they have my picture and maybe I am going anywhere they can send someone to kill me. And maybe if I am going to my country they can kill me.”

³⁸² *Ernestina and Samuel Quainoo*, *supra* note 369.

³⁸³ Groenhuijsen, M., *Victims’ Rights and Restorative Justice: Piecemeal Reform of the Criminal Justice System or a Change of Paradigm?* (2004).

This research indicated there was little available aftercare for victims, despite the fact that many still claim to be living in fear for long periods of time after they are taken out of the exploitative situation. Therefore this issue also needs to be addressed by incorporating care strategies post-trial.

To cushion the effects of the CJS on the trafficked child and to potentially improve conviction rates, several practitioners identified the need for a single legal guardian to provide the child with emotional and practical support and accompany them to all meetings and court hearings. This would ensure respect for the primacy of the child's best interests in line with Article 3 of the UNCRC and assist in the development of a bond of trust that could positively impact on criminal investigations.

The development of such a relationship with a single person, who has parental responsibility and is acting in the child's best interests, would enable quicker and fuller disclosure, improving cooperation in police investigations while providing a backbone of consistent support for the child throughout. The Convention clearly identifies the requirement for such a Guardian in Article 10.4(a) and in the Directive through Articles 14(2), 15(1) and 16(3). It has been argued by NGOs and legal professionals that the local authority, in its role as a corporate parent, cannot always act in the child's best interests as it has a financial interest in the child's case. In addition, without anyone with parental authority to act in the best interests of the child regarding their care, children can instruct their own solicitors, even if this is against their best interests.³⁸⁴ Such situations present a real concern for children who may continue to be under the control of traffickers. The absence of a guardian is likely to have a negative impact on trafficking prosecutions as the child may not feel able to disclose or instruct their solicitors to act in their best interests.

A further problematic area highlighted in this research is compensation for trafficked children. Under both the Convention and Directive, trafficked children are entitled to compensation for the crimes committed against them. However, in reality, the numbers successfully claiming compensation are reported to be very low: during this research there were few cited instances of successful compensation claims for children with most practitioners not displaying much awareness of the procedure to claim compensation. In a few known cases, trafficked children have been represented on a pro bono basis by legal representatives. One NGO, ECPAT UK, working with the legal firm Hogan Lovells, has produced leaflets for young people in 10 languages on how to obtain compensation.

Non-criminalisation of trafficked children

It remains the case in the UK that trafficked children are prosecuted for crimes they are forced to commit while being exploited and under the control of traffickers, while their traffickers go unpunished. This is particularly the case for those trafficked for forced begging and criminal activities, such as petty crime and cannabis cultivation. At this initial point of contact, children may be seen as criminals and indicators of trafficking are not recognised and/or acted upon, with often adverse consequences. One service provider said: "*They see it as an immigration issue. It's like 'lock them up and send them back'. Not, 'this is trafficking and we need to start investigating'.*"

Guidance from the Association of Chief Police Officers (ACPO) states children or those who claim to be children, found in cannabis farms, should be treated as potential victims of trafficking, which reinforces the obligations stated in the Convention and Directive. The ACPO guidance also states: "In line with the *Safeguarding Children Who May Have Been Trafficked* guidance, the police should work with local authorities to ensure early identification of trafficked victims before entering any suspected cannabis farm."³⁸⁵

In addition, the *CPS Policy on Prosecuting Cases of Human Trafficking* places particular emphasis on the child's unlikelihood of disclosing their experience to the authorities and that if the offence has been

³⁸⁴ ECPAT UK, *Watch over me: A system of guardianship for child victims of trafficking* (2011).

³⁸⁵ Association of Chief Police Officers, *supra* note 330.

committed by a child whilst in a coerced situation this should be considered as strong public interest to stop the prosecution.³⁸⁶ Yet it is widely acknowledged that such policy and guidance on trafficked children is not always regarded by prosecutors, police, legal practitioners and the UKBA and even the courts.

In particular, the trafficking of Vietnamese children for work in cannabis farms was noted during the research as a particular area of concern. From 1 April 2009 to 30 June 2011, according to the NRM, there were more suspected child victims of trafficking from Vietnam than any other country.³⁸⁷ It is reported that, despite the ACPO and CPS guidance, many children, in particular Vietnamese young people, are being arrested when found in cannabis farms and sent to prisons or Young Offenders Institutes (YOI).

In not adhering to the non-criminalisation of trafficked children who cultivate cannabis, the UK is failing to recognise the significance of the ILO Convention No 182 that defines the worst forms of child labour, as including “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties”.³⁸⁸ Similarly the UNCRC states that “Parties shall take all appropriate measures, including legislative, administrative, social and educational measures ... to prevent the use of children in the illicit production and trafficking of such substances.”

This research suggests further assessment of the situation is required to discover the true number of trafficked children charged with offences, alongside a wider assessment of those victims age assessed as adults and currently in adult custody. In addition, policy on the assessment of children and young people who may have been trafficked in custody, on remand or serving time is woefully lacking, without recommendations for specific safeguarding.

Good practice - Operation Golf

In the summer of 2007, an investigation under Operation Golf found 200 Romanian Roma children criminally active in London. They also had convictions in 32 other UK police force areas for an array of petty crimes such as begging, distraction crime and thefts. A number of these children were encountered by the police and arrested which demonstrated that initially they were being criminalised while exploited. After investigations ascertained the cases as trafficking, decisions not to criminalise the children were taken and they were viewed as victims of crime first and foremost.

While being forced to commit petty crime, there was evidence to suggest that the children were physically and emotionally abused. The children were living in squalid conditions, had no toys and were not accessing education. To safeguard these children from abuse during the police investigation, the police referred the children to Social Services because of neglect and maltreatment. Social Services visited the properties where the children were living. An assessment was carried out resulting in the drawing up of a care plan including the requirement that the children attended school. Consequently, the children began to attend school and for that period of the day they were in a protective environment. Furthermore, this disrupted the trafficking network’s activities by reducing profitability as this limited the time the children could commit crime. Evidence of neglect was also adduced in court in *R v Speranta and Gheorghe Miha*³⁸⁹ which supported the evidential package to ultimately convict the traffickers of child cruelty.

³⁸⁶ CPS Policy for Prosecuting Cases of Human Trafficking (2011).

³⁸⁷ See: www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics.

³⁸⁸ ILO, *Worst forms of child labour*. Available at: www.ilo.org/ipecc/facts/WorstFormsofChildLabour/lang--en/index.htm.

³⁸⁹ *R v Speranta and Gheorghe Miha* at Reading Crown Court, 30 July 2010.

Concern has also been expressed in relation to the use of the Police and Criminal Evidence Act 1984 Code of Practice which allows 17 year olds to be treated as adults in police custody with access to an appropriate adult is at the discretion of the police. Many trafficked children fall into this age category or may be age assessed as being so. With their particular vulnerabilities, this lack of protection and support may risk further traumatising and criminalisation.

However, on 25th April 2013, the High Court held that the treatment of 17 year olds as adults under the PACE Codes of Practice was unlawful and incompatible with Article 8 of the ECHR, read in light of the 1989 UN Convention on the Rights of the Child and a breach of s.6 of the Human Rights Act 1998. The Government has decided not to appeal against this ruling and to bring about the necessary legal changes to fully implement the judgment, to ensure that all children have the right to notify their parents and to be assisted by an independent, appropriate adult when in police custody. At the time of writing, the legislative changes have not been put into place but guidance is being drawn up for the police to follow in the interim until the changes are made.

In addition, the criminal age of responsibility in England, Wales and Northern Ireland is 10 and in Scotland it is 12. There is contradiction here between the low age of responsibility and the duties upon the UK to treat those aged under 18 as children under the UNCRC, the Convention and Directive. This “grey area” of law should be addressed in order to ensure children who are accused of crimes relating to trafficking are afforded the rights they are entitled to as children under international law.

Conclusion

This research highlights several areas of concern, which, if addressed, would improve the profile of child trafficking as a crime in the UK and increase the number of successful prosecutions. The result of difficulties in reporting, prosecuting, convicting and effectively punishing a crime such as child trafficking have negatively impacted upon the effectiveness of the UK’s criminal justice response to child trafficking.³⁹⁰ It is clear that good practice does exist across the UK in identifying victims and tackling child trafficking as a crime. However, this research has indicated an urgent need for a more widespread, consistent approach, from the Government using identified good practice and scaling it up across the UK. This should be carried out when young people have been fully consulted on their experiences and opinions of the CJS in line with Article 12 of the UNCRC. Furthermore, in line with the UK’s obligations, concerned agencies must put the best interests of the child at its heart for every trafficked child, without discrimination. These key principles of best interests, non-discrimination and the child’s rights to be heard must be adhered to at all stages of a criminal investigation into child trafficking. Child trafficking is child abuse and this is a message that must be central to the UK’s criminal justice response in order to successfully safeguard its vulnerable victims while delivering justice to those who seek to exploit them.

Recommendations

- **Bring UK trafficking legislation in line with the Convention and Directive’s definition of children as under 18s, and clarify the word “young” in Section 4(4)(d) of the AI(TC)A replacing it with under 18s to avoid practitioner confusion in application and scope. This should be subsequently included in a comprehensive Act covering human trafficking and other forms of modern day slavery.**
- **Ensure all suspected cases of child trafficking are investigated fully, strictly utilising s.47 of the Children Act 1989 to trigger multi-agency inquiries and ensure the prosecution of an offence for a sufficient period of time after the trafficked child has turned 18.**

³⁹⁰ Tali G. (2011), Child Victims and Restorative Justice: A Needs-Rights Model

- **Introduce mandatory child-specific trafficking training for frontline staff that is reviewed and updated regularly to improve identification of trafficked children and safeguarding responses.**
- **Increase proactive police investigations into child trafficking supported by increased government resources, and increase the use of victimless prosecutions in child trafficking cases.**
- **Appoint a legal guardian to each suspected trafficked child in order to act in the child's best interests and to act as a link between the multiple agencies involved in prosecuting child trafficking.**
- **Ensure age assessments on unaccompanied children follow the "benefit of the doubt" principle at all times with input from multi-agency actors.**
- **Conduct an audit of key typologies of forced criminality trafficked children groups in prisons/YOIs/detention centres with the aim of reviewing their convictions in partnership with the Criminal Cases Review Commission.**

Chapter 10: Devolved approaches to prosecuting trafficking

Northern Ireland³⁹¹

This chapter provides a brief overview of the policy and practice regarding the prosecution of trafficking in Northern Ireland's (NI) CJS and its agencies such as the Police Service of Northern Ireland (PSNI) which is tasked with investigating trafficking, the Public Prosecution Service for Northern Ireland (PPS) that is the principal prosecuting authority and the Department of Justice (DoJ) that oversees the NI's CJS and provides funding and support for the provision of services for trafficked persons. This section identifies reasons why so few cases to date have been successfully prosecuted in NI and concludes with recommendations to ensure that NI creates a hostile environment for traffickers.

Whilst there have been a number of developments in NI since the publication of the ATMG's last report *All Change*,³⁹² significant concerns remain among the majority of interviewed participants in relation to the effectiveness of the NRM; identification and investigation of trafficking cases; coordination of the main stakeholders; the recording of accurate NI data;³⁹³ oversight of anti-trafficking work in NI generally including the quality of information provided to victims in the varied processes; effective remedies for forced labour victims;³⁹⁴ and the lack of compensation awards for trafficked persons. In particular, the numbers of prosecutions for trafficking offences in the NI CJS remain extremely low with only two reported successful sexual exploitation cases to date since the implementation of the NRM.

Legislation

The criminal legislation in NI, as it applies to trafficking offences, mirrors that in the rest of the UK, however, there are some variations in terms of sentencing. The main exception is the Sexual Offences (Northern Ireland) Order 2008 which was implemented following the first fundamental review of sexual offences legislation in NI, and consolidates sexual offences into one statute. All current sexual offences that apply in NI, including the provisions in the SOA, are now superseded by the 2008 Order, with the exception of trafficking offences that remain in ss.57–59 of the SOA (now in s.59A since May 2012). The difference between the international agreed trafficking definition and the one used in NI, especially around the use of coercion and victim's consent, continue to cause uncertainty.³⁹⁵ The concern is that this may result in an acceptance that the prosecution for trafficking is too difficult to pursue.

An opportunity exists to address this by way of the Human Trafficking and Exploitation Bill proposed in August 2012 by Lord Morrow. If passed into legislation this Bill could make NI the lead in the UK on trafficking law.³⁹⁶ Lord Morrow informed the NI Assembly that he has "major concerns" about the limited scope of the trafficking offences in the Northern Ireland Criminal Justice Bill. He claims it falls short of proper implementation of the Directive and does not "meet our obligations under the European Convention on Human Rights". The proposed Bill also codifies support services for victims, and whilst it makes it an offence to pay for sexual services from a prostitute (or a trafficked person), it fails to address other forms of exploitation. The DoJ has agreed to consider the provisions in Lord Morrow's Bill.³⁹⁷

³⁹¹ This section was researched and written by Lois Hamilton.

³⁹² *All Change*, *supra* note 13.

³⁹³ Both Amnesty NI and Law Centre NI have raised this with the DOJ directly following publication of *All Change*.

³⁹⁴ A new Crimestoppers campaign to highlight human trafficking for the purposes of forced labour and domestic servitude was launched by Justice Minister David Ford on 21 January 2013.

³⁹⁵ *R v Rong Chen, Simon Dempsey and Jason Owen* [2012] NICC 26.

³⁹⁶ Care, *Lord Morrow calls for a Human Trafficking Bill for Northern Ireland* [online] Available at: www.care.org.uk/news/lord-morrow-calls-for-a-human-trafficking-bill-for-northern-ireland.

³⁹⁷ Northern Ireland Assembly, *Criminal Justice Bill: DOJ Briefing* [online]. Available at: www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2011-2012/June-2012/Criminal-Justice-Bill--DOJ-Briefing/.

Identification

The PSNI is the main source of referrals to the NRM. Unlike the rest of the UK, there are no NGO First Responders except when it involves children. Whilst referrals can be made by statutory organisations such as social services or the Gangmaster's Licensing Authority (GLA), to date no referrals have been made by either. The vast majority of NI referrals to the NRM involve sexual exploitation. The PSNI confirmed a dramatic decrease in the number of NI trafficking cases referred to the NRM in 2012. PSNI data records the following number of NRM referrals:³⁹⁸

| | |
|--------------------------------|-------------------|
| 1 April 2009 - 31 March 2010 | 20 ³⁹⁹ |
| 1 April 2010 - 31 March 2011 | 23 |
| 1 April 2011 - 31 March 2012 | 33 |
| 1 April 2012 - 31 January 2013 | 8 |

The drop may be attributed in part to structural changes within the PSNI in 2011 that included a different approach to policing of serious organised crime, including trafficking. The responsibility for the identification of victims and NRM referrals now lies with every police officer rather than with specialised human trafficking teams. According to the PSNI, the majority of trafficked persons in NI are identified through targeted and proactive investigations or by self-referral rather than chance encounters by frontline officers. However, with every police officer tasked with the identification of victims it would still be expected that the number of referrals would increase rather than decrease. Conversely, this can also suggest that specialism is needed to identify trafficking and that identification on the frontline is too complex. This may also be due to a lack of training on trafficking identification.

Though many officers will not encounter a trafficked person during their police career, the ones who do appear to be ill-equipped to identify them.⁴⁰⁰ This drop in referrals is alarming given that intelligence throughout the UK and current NRM patterns in England and Wales do not suggest that there has been a reduction in trafficking.⁴⁰¹ The police continue to assert that demand for sexual services in NI remains high suggesting that in NI there may be a failure in the detection of trafficked persons resulting in fewer investigations and therefore the prosecution of traffickers.

The number of NRM referrals for alleged labour trafficking is extremely low despite extensive research carried out by The Joseph Rowntree Foundation (JRF) in June 2011, indicating that NI has specific migrant communities vulnerable to labour exploitation.⁴⁰² Whilst it was suggested that these cases are more difficult to detect, it is suspected that trafficked persons are not identified because planned operations, in situations that may give rise to labour exploitation, are primarily for the enforcement of immigration rules.⁴⁰³

The PSNI provides an online e-learning tool for the trafficking training of all of its officers. It is not mandatory and to date the PSNI do not have statistics on the take up of the e-learning package. It has been suggested that these omissions in training have had an adverse effect on how police respond to trafficked persons. Reports by participants indicate that trafficked persons are frequently not believed by police at first contact and the police have little or no knowledge of what they should do with the NRM process. Concerns have been raised about the lack of information provided to trafficked persons

³⁹⁸ A senior police officer in the PSNI suggested the figures can change slightly due to late and/or false reports.

³⁹⁹ According to Amnesty NI the UKBA provided a figure of 25 referrals in 09/10 at the presentation to the APGHT on 13th November 2012.

⁴⁰⁰ One service provider alleges that some victims have not been believed when they self refer at local police stations and in one case the police officer asked the service provider how to do the referral. In another case the police used in appropriate language towards a victim who was told "we know you are a failed asylum seeker".

⁴⁰¹ *Home Office, supra* note 48.

⁴⁰² "Forced Labour in Northern Ireland: exploiting vulnerability": The research studied migrants working in the fishing, mushroom and catering industries, as well as Filipino and Romanian migrants and highlighted the links between vulnerability and a lack of English language skills, limited access to social networks and a lack of local knowledge. See: www.jrf.org.uk.

⁴⁰³ The OCTF publish an Annual report & Threat Assessment which can be found at: www.dojni.gov.uk/index/media-centre/news-archive/july-2012/doj-organised-crime-annual-report.pdf.

by the PSNI at the outset of any investigation to ensure victims give "informed consent" to be referred to the NRM; and whether the information provided is in a language the trafficked person understands in accordance with Convention obligations.⁴⁰⁴

Investigation

The PSNI is the primary source for the investigation of trafficking cases and trafficking is included in the 2012 - 2015 Policing Plan.⁴⁰⁵ All cases of crime are reported to local district police who will investigate and if there is an organised crime group element it will be referred to the Organised Crime Branch (OCB) who decide to commission the investigation. If there is a child or other issues including vulnerability, then it can be referred to Public Protection Units (PPU)⁴⁰⁶ within the PSNI.⁴⁰⁷

The OCB hold the database on NRM referrals by the PSNI.⁴⁰⁸ Unfortunately, there is no longer any dedicated trafficking unit in NI. The OCB deal with all crime types such as drugs, robbery and extortion. They also provide guidance, training and assistance to other police departments. All detectives receive trafficking training in their mandatory foundation courses as do the supervisory ranks within the eight NI districts (e.g. Detective Sergeant/Detective Inspector). Specialist organised crime teams also provide information packages, briefings and emails to response officers. Where joint protocols exist with other statutory bodies such as social services, specialist training is available, especially around conducting interviews with trafficked persons.

Most participants agreed that when cases are investigated by officers within the OCB, they are handled sensitively and with a high degree of specialism. But criticism remains about the handling of trafficking cases by frontline officers. However, there is an overall perception that there is a lack of investigations resulting in low numbers of trafficking convictions. The PSNI reports that trafficking cases often involve an international dimension requiring substantial resources and this affects the policing budget when compared to other crimes. This could affect how investigations are managed, for example, they may be processed under other legislation which does not involve travel costs or assistance from other countries. Whilst resources are a reasonable consideration, the lack of successful prosecutions of trafficking cases in NI cannot be justified solely on this basis. By way of comparison, there was no lack of terrorism cases in NI despite the huge costs of these to the public purse.

Most information, before and during a trial, is provided to the victim almost exclusively by the PSNI and on a case-by-case basis with the limited resources available. Given that a number of other legal processes may be running in parallel this may result in confusion for the trafficked person at a time when risks may still be prevalent in their mind. All of this may deter trafficked persons from participation in the prosecution process. Some participants inaccurately assumed that trafficked persons had legal representation during this time.

Barriers to investigation

The PSNI confirmed that traffickers take advantage of the operating times of scheduled European flights to NI and frequently use the last flight to move trafficked persons around knowing that staffing levels during these times will be low. The focus remains primarily on sexual exploitation and most

⁴⁰⁴ Amnesty is currently developing a victim leaflet in conjunction with the DOJ.

⁴⁰⁵ The Northern Ireland Policing Board and the Police Service of Northern Ireland, *Policing Plan 2012 - 2015*, found at: www.psni.police.uk/policing_plan_2012_-_2015.pdf. The priority initiatives contained include continued support of the work of the OCTF, prevention and detection of organised crime and tackling human trafficking through reducing the demand for prostitution and sexual exploitation.

⁴⁰⁶ Assistant Chief Constable Drew Harris was instrumental in the introduction of the new district PPU's responsible for the investigation of child and domestic abuse and the management of violent and sexual offenders. Police Service of Northern Ireland, *Queens Birthday Honours 2010*, found at: www.psni.police.uk/queensbirthdayhonours_june2010.

⁴⁰⁷ According to a senior PSNI officer the PPU units are comprised of specialist detectives who will receive training on various issues such as domestic violence and all receive general training in trafficking. One of the remits of PPU is small or large-scale organised abuse.

⁴⁰⁸ The OCTF publish an Annual report & Threat Assessment which can be found at <http://www.dojni.gov.uk/index/media-centre/news-archive/july-2012/doj-organised-crime-annual-report.pdf>.

participants suggest that this is because it is easier to detect and provides higher success rates for the police. There is a distinct lack of detection, investigation or prosecution in other exploitation cases such as forced labour or domestic servitude. To date, there have been no cases prosecuted involving s.71 of the CJA, despite the PSNI accepting labour trafficking exists and objective research identifying it as a major problem in some sectors of the NI workplace. The PSNI confirmed that some officers do receive specialist training on labour exploitation, yet to date there has been no prosecution in NI for forced labour. It is understood that a number of forced labour cases are currently being investigated by the PSNI.

Despite the *Rong Chen* case, which involved internal trafficking between England and NI, awareness of internal trafficking within the police appears to remain low. Some of this is due in part to the stereotyping of victims as NI/British children (see children's section below). The PSNI acknowledge that this needs to be addressed and have confirmed it as a new area of concern where they are currently expanding learning. It seems that certain officers within the PPU may be more alert to this in comparison to ordinary frontline response officers.

Partnership working

The PSNI works closely with the Garda Síochána in the Republic of Ireland (ROI) in respect of cross border operations, with the latter sitting on Organised Crime Task Force (OCTF) meetings chaired by the PSNI. The movement of people across the land border is recognised but in reality very little information about the transit of victims between NI and the ROI is disclosed or published. The PSNI has seconded senior officers to work exclusively within the UKBA. The controversial Operation Gull⁴⁰⁹ continues with officers from the PSNI, UKBA and occasionally the Garda Síochána working together at ports and airports throughout Ireland. These operations are frequently very secretive with the main objective of immigration enforcement, removal or control. In the *OCTF 2012 Annual Report and Threat Assessment* Operation Gull claims to have increased detection of "illegal immigrants" by over 60% with over 70% of the 300 or so people intercepted by them removed from the UK. Interestingly, the report makes no reference to the identification of trafficked persons during these operations despite the fact that both the UKBA and the PSNI are First Responders.⁴¹⁰ Most stakeholders outside of the police and the UKBA believe that the focus of these operations is simply border control and the identification and removal of immigration offenders. The GLA in NI who sit on the OCTF have to date had no substantial input in relation to cases of labour exploitation although the view seemed to be that the GLA were more positive in their operations when compared to the "rounding-up" of immigration offenders by UKBA on Operation Gull. Most believe that the GLA is more of an employers' sanction role than an organisation that identifies trafficked persons.

Prosecution

The PPS⁴¹¹ is the principle prosecuting authority in NI and it decides whether or not the evidential and public interest tests are met to enable a criminal trial to proceed through the criminal courts. The PPS currently has a specialist casework section that deal with complex cases including consideration of referrals of trafficking cases from the PSNI. A senior prosecutor has been appointed as the policy lead in trafficking cases. In early 2013, the PPS are due to publish the long awaited policy document on guidance for prosecutors in NI involved in cases of trafficking. This should bring

⁴⁰⁹ Operation Gull focuses on domestic flights into and out of NI, domestic UK sea crossings between NI and Scotland and the border with the Republic of Ireland to identify and arrest illegal migrants.

⁴¹⁰ Organised Crime Task Force, *2012 Annual Report & Threat Assessment Organised Crime in Northern Ireland* p.15. Available at: www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/doj-organised-crime-annual-report.pdf.

⁴¹¹ The PPS was established in June 2005 by the commencement of the Justice (NI) Act 2002. The Act defines the PPS, its statutory duties and responsibilities and the legislative framework within which it must provide its services. In addition to taking decisions as to prosecution in cases investigated by the PSNI, it also considers cases investigated by other statutory authorities, such as HM Revenue and Customs. The PPS have a duty to the defendant as well as their duty to prosecute on behalf of the State and the general public. Since the devolution of policing and justice to the NI Assembly in April 2010, the Service has been designated as a non-ministerial government department. Funding for the PPS is provided by the NI Assembly and, as accounting officer for the Service, the Director is responsible for ensuring that the public monies provided are used efficiently. All members of staff are NI Civil Servants.

NI prosecutors in line with the rest of the UK and provide a benchmark for the conduct of such cases. It should also provide valuable information for trafficked persons and others involved in a trial and clarify the correct approach and procedure to be followed before, during and after prosecution. In relation to training, the PPS does provide specialist training to its prosecutors on sexual offences. Confusingly this does not extend beyond the PPS, as one prosecuting advocate stated that barristers instructed by the PPS in criminal trials, are not required to undergo or provided with any specialist training on trafficking. This also contradicts what has been alleged in the recent Inter-Departmental Ministerial Group (IDMG) report of October 2012 where it is stated that “[t]he PPS will ensure that any external barrister instructed in a case involving trafficking is experienced and skilled in the conduct of such cases and efforts will be made, wherever possible, for the same barrister to deal with the case at all stages.”⁴¹² The consequence may be that an inexperienced barrister is instructed to run a complex trafficking case.

According to the PPS from 1 January 2010 to 3 October 2012, there have been 16 cases submitted to them following trafficking investigations by the PSNI in NI involving 23 suspects. Of the 16 cases received, prosecutorial decisions were issued in 14 cases involving 22 of the suspects. The remaining 2 cases are pending. Of course not all of these 22 suspects were reported for the offence of trafficking but for related offences such as controlling prostitution, brothel keeping or using the services of a prostitute who was subject to exploitation. In addition, not all of the prosecutorial decisions issued in the 14 cases were to proceed with the case to trial. The breakdown of the 16 cases is as follows:⁴¹³

| | |
|----------------|---|
| Four suspects | Prosecuting decisions were issued for other related offences as the PPS considered there was insufficient evidence to provide a reasonable prospect of conviction for the offence of trafficking for sexual exploitation. |
| Four suspects | Prosecuting decisions were issued for trafficking for sexual exploitation (and other offences). Of these, two were convicted, one suspect had the offence left on the court books but he was convicted for controlling prostitution for gain and one case is ongoing. |
| Three suspects | No prosecuting decisions were issued - this case was referred to Scotland with assistance provided by the PPS - the three suspects were convicted in Scotland (see Scotland below). |
| Three suspects | No prosecuting decisions were issued - these cases involved arranging/facilitating travel of people into the UK for exploitation (non-sexual). |
| Five suspects | No prosecuting decisions were issued - these cases involved the summary offence of using the services of a prostitute subject to exploitation under the Policing and Crime Act 2009. There is a statutory six-month time limit for these offences to issue criminal proceedings. By the time these offences were referred to the PPS, the time limit had expired. The cases could not proceed, as they were statute barred. |
| Two suspects | No prosecuting decisions were issued - cautions were issued as there was insufficient evidence to prove that the prostitute was a victim of trafficking. |
| One suspect | Prosecuting decisions were issued for assisting illegal entry into the UK. |
| One suspect | This case is still ongoing. |

⁴¹² Home Office, supra note 48, p.32.

⁴¹³ Information provided directly by the PPS.

The PPS stated that the reasons for not prosecuting a case could include a lack of evidence to secure a conviction, unreliable witness accounts, unwillingness of a trafficked person to continue with the case or that it would not be in the public interest to prosecute i.e. where the trafficked person's mental health would be adversely affected during the course of a criminal trial. In cases where there was insufficient evidence to prosecute for trafficking but the prosecution was taken forward for other related offences, it was stated that this effectively disrupted trafficking activity.⁴¹⁴ In order to assess the success of trafficking prosecutions in NI it is accepted it cannot be based solely on prosecuting figures for trafficking offences. However, this does not provide a comprehensive reflection of performance. Whilst it is accepted that in some instances any prosecution is better than none it should not result in a mindset that prosecutions cannot succeed on trafficking charges alone because it is more difficult to do so. Furthermore, taking the statistics as a whole, with only 16 cases referred and two trafficking convictions, this can hardly be argued as an effective response overall. The PPS also add that in comparison to other serious crimes like rape, the resources provided for trafficking cases and public awareness/policy appear to be disproportionate.

The case of *Rong Chen*⁴¹⁵ heard in Belfast Crown Court in June 2012 is in the PPS's view a "model" example of a successful trafficking case where early communication and partnership working with the PSNI was instrumental in the case succeeding. The PPS stated that they met with the police from the outset and provided advice to the PSNI prior to arrest and throughout the investigation. According to the PPS, the case was complex involving several defendants and numerous witnesses, and they were able to make decisions together early on to make sure that the evidence was presented in the best possible way. The defendants in the case entered guilty pleas on various counts and only Rong Chen was convicted for trafficking. Information has not been disclosed on the initial charges brought against her and the others involved or the negotiations in relation to pleas made by the defendants after the jury was sworn in.

It is clear that the scope for a successful prosecution by the PPS, in relation to trafficking and related offences, is intertwined with the PSNI ability to respond to trafficking. The PPS can only act upon the cases that are referred to it by the PSNI and if the police are failing to identify and fully investigate trafficking cases, this will impact upon the volume and outcome of cases the PPS can consider. The evidence obtained at the outset by any individual law enforcement officer is critical and if this is incomplete or of poor quality then this makes the job of the prosecutor more difficult.⁴¹⁶ Furthermore, if the PSNI focuses almost exclusively on sexual exploitation cases, prosecutions for labour trafficking will not occur.

Sentencing attracts the vast majority of criticism with most participants considering the sentences as too lenient, with some asking what it takes for a trafficker to be sentenced to the maximum imprisonment. In the first trafficking case of *Matyas Pis*,⁴¹⁷ in Belfast Crown Court in April 2012, the defendant was convicted of a number of offences including trafficking. Pis received three years' imprisonment, half of which was to be served on licence, which reflects Judge Burgess' statement that no coercion, threat or force was used. Judge Burgess relied on the SGC's sentencing guidelines which states that cases involving no coercion were on the lower end for trafficking sentences. In June 2012, *Rong Chen*⁴¹⁸ was sentenced to seven years' imprisonment, half of which was to be on licence.

⁴¹⁴ The PPS state that other related offences can also lead to a custodial sentence as well as the restraint and confiscation of criminal assets thereby disrupting human trafficking.

⁴¹⁵ *Rong Chen*, *supra* note 395.

⁴¹⁶ The fact that some police officers on the front-line are unaware of the indicators of trafficking will impact on the evidence available at those early and crucial stages of the investigation.

⁴¹⁷ *R v Matyas Pis* [2012] NICC 14.

⁴¹⁸ See case study below.

This provides an example of the complications and confusions involved around the sentencing of traffickers. Whilst it is accepted that sentencing is a matter for the judiciary some have called for changes to be made.⁴¹⁹

Conversely, the PPS stated that there have been a few cases involving crimes committed by trafficked persons, where decisions were taken not to prosecute despite sufficient evidence being available. In all of these the PPS considered that it was not in the public interest to proceed as their criminal activity was as a direct result of their situation and the fact that they were considered victims of trafficking. The PPS admit that it is sometimes difficult to draw the line in cases of serious crime.

Victim care and support during and after the trial

The availability of ongoing specialist support services or interpreters trained in dealing with cases of trafficking is patchy. Many victims do not receive the counselling and assistance they need and are entitled to. The charity Women's Aid assigns a support worker to provide information or assistance to a trafficked person and signpost to other support or legal services where necessary. Many participants involved in anti-trafficking work or supporting trafficked persons have not considered the issues in this chapter nor do they understand the criminal process involved.

The PSNI now also works in partnership with Migrant Help, the Red Cross and Barnardo's in some planned operations to ensure that accommodation and support is in place for any trafficked persons rescued as a result. A new engagement group was set up by the DOJ in response to its consultation aims, to address concerns raised about the lack of partnership working with the NGO sector.⁴²⁰ A new project, in partnership with the PPS and Victim Support, is due to be rolled out to provide additional specialist support for victims in the NI CJS although the detail is still unknown. Initially, this will be available in Magistrates' Court cases with the intention of extending the scheme to the Crown Court in the future. In addition, some participants suggested an advocate for the trafficked person who could liaise with all of the relevant professionals involved in the case, which is a concept similar to the guardianship scheme proposed for trafficked children.

Doubts have also arisen about when and who should take responsibility for providing information about victim's access to the statutory NI Compensation Scheme. Only one trafficked person to date has been successful in the NI statutory scheme. Currently Migrant Help assist some victims with these claims and have indicated that they intend to work with Victim Support in the future to make sure that trafficked persons are given access to and help with applications for compensation through the statutory scheme.

Child trafficking

There have been no prosecutions or convictions for child trafficking in NI despite several children being referred to the NRM.⁴²¹ It is clear that the numbers of trafficked children identified are lower than the rest of the UK but conflicting reports exist about the actual numbers of children identified in NI.⁴²² It is unclear why social services, despite being First Responders, have not referred any trafficked children to the NRM, but relied on the police or UKBA to do so. Only one participant interviewed for

⁴¹⁹ Obokata, T., *NICEM Briefing Paper: Analysis of Current Responses to Human Trafficking in Northern Ireland* [online]. Available at: www.nicem.org.uk/userFiles/File/NICEM%20Trafficking%20Report.pdf.

⁴²⁰ Northern Ireland Executive, *Justice Minister David Ford has hosted the first meeting of a new Engagement Group to tackle human trafficking*. Available: www.northernireland.gov.uk/news-doj-131212-justice-minister-hosts.

⁴²¹ NRM statistics.

⁴²² The PSNI confirmed that the OCB has only been involved in two cases to date while Barnardo's "Safe Choices" service claims that seven children were referred to the NRM by the police some 18 months ago after indicators of internal trafficking presented. All cases involved sexual exploitation and in its view some forty children are currently at risk. The seven children referred to the NRM all received positive conclusive decisions but no information has been provided to Barnardo's to date in relation to any proposed criminal proceedings. The PSNI consider that these cases are not "normal" trafficking and therefore do not fall to Organised Crime. These cases have yet to be referred to the PPS for prosecutorial decisions. The Gateway team social workers- who are called out when unaccompanied children are found at the international airport advise that their numbers are greatly reduced from 18 referrals in 2008 (the majority of whom then went missing) to just 2 in 2012. The Northern Ireland Guardian ad Litem Agency (NIGALA) also report that they have been involved in 7 or 8 cases but that none of these proceeded to the prosecution stage. It is not known if all these cases were referred to the NRM.

this research was aware of potential trends relating to the movement of children for labour trafficking and many state that this is an area of concern that needs to be addressed urgently especially given the ease of movement between the North and South of the NI border. Concerns around the Roma community using children for on-street begging and benefit fraud were raised but very little data or expertise exists on this and it is unknown whether the PSNI are currently investigating such cases.

Investigation

Prior to 2011, senior social workers had named specialist contacts within the PSNI to direct their call to a nominated specialist law enforcement officer if they were suspicious that a child may have been trafficked. Currently, they are required to call their local police station or local control room anticipating that the law enforcement officer that takes the call will be able to advise them accordingly. Senior experienced social workers interviewed were critical of the change and have suggested that an important link has now been broken. Multi-agency participation is stated to have disappeared with some social workers claiming that the police frequently do not attend meetings around the care and planning of identified trafficked children.⁴²³ Although several participants stated that there are some individual diligent officers who will go over and beyond their role to assist and respond to urgent safety issues.

Some participants stated that the interviewing of children, especially those who are extremely vulnerable, would be more effective if the police allowed trained senior social workers to conduct the first interviews with potentially trafficked children. This would ensure that the interviews were conducted sensitively and that best evidence was obtained, especially in cases where the officers concerned had no previous experience. In addition, it was suggested that there should be certain "givens" accepted in legal processes to encourage the child to tell their story rather than be questioned repeatedly throughout. One participant suggested that the lack of successful prosecutions in child trafficking cases may be a direct result of the fact that children will take longer to tell their stories and disclose what has happened.

Internal trafficking

In October 2011, Barnardo's published *Not a world away*⁴²⁴ focusing on the sexual exploitation of children and young people in NI, particularly those in or missing from care. The report's findings indicate that sexual exploitation is a serious concern in NI. The vast majority of abusers are adult males and young people between the ages of 12 and 15 are most at risk. While most of the key stakeholders interviewed were aware of the concept of internal trafficking, frontline staff who may come into contact with such children appeared to lack knowledge on what to do if indicators are present; or victims are not believed and seen as more of a nuisance. If mental health issues are apparent it simply made the situation worse.⁴²⁵ Many stated that as a result cases are simply being missed with the police relying heavily on the NGO sector to identify potential cases. The main reasons put forward to explain this failure is the continued stereotyping of what a trafficked child looks like. One interviewed participant worryingly noted that because the police are so ineffective in this area parents of exploited children may resort to the use of paramilitaries to take action against traffickers.

Good practice – Barnardo's & Willowfield Police Station

A pilot project, exclusively funded by Barnardo's, involves the secondment of one of their specialist caseworkers to Willowfield Police Station in East Belfast, to address some of the areas of concern

⁴²³ One senior social worker claimed that PSNI officers simply didn't turn up at pre-arranged care meetings involving trafficked children
⁴²⁴ Beckett, H., *'Not a world away' The sexual exploitation of children and young people in Northern Ireland (2011)*. Barnardo's.
Available at: www.barnardos.org.uk/13932_not_a_world_away_full_report.pdf.

⁴²⁵ A representative from NIGALA claims that in one situation a young victim was not believed and subsequently detained who had mental health issues and a young child.

around identification and investigation of internal trafficking of NI children. The caseworker sits alongside police officers that respond to missing and vulnerable children already known in the NI care system. The pilot's aim is to identify potential areas where sexual grooming and subsequent exploitation may occur. It is hoped that this system will be rolled out across NI and will ultimately enable more prosecutions.

Social Services

There are five Health and Social Care Trusts in NI providing services to the public, including children. The Trusts are governed and funded by the Department of Health, Social Services and Public Safety (DHSSPS). The Northern Trust, in particular, is the most likely to come across children trafficked into NI from the rest of the UK, Europe or abroad, as it covers the main airport and port. However, all social workers involved with vulnerable children will potentially come across those that are trafficked. Child protection and trafficking training is available but is not mandatory for all social workers that work with vulnerable children. In addition, the DHSSPS and the PSNI published guidance in February 2011 for the working arrangements on the *Welfare and Safeguarding of Child Victims of Human Trafficking*. Unfortunately many key practitioners seem unaware of its existence or content. One interviewed social worker stated that the Trust's internal legal teams cannot and do not routinely advise social workers on trafficking issues. Cumulatively this has resulted in inconsistent responses and knowledge of child trafficking across the five separate NI Trusts as most develop their trafficking knowledge experientially. These pockets of expertise do not appear to be utilised in any proactive or planned way resulting in an ad-hoc approach and loss of good practice. While social work teams are eager to understand and develop the necessary skills and knowledge, this is frequently too long after initial identification. Calls have been made for specialist trained teams within each Trust to coordinate and consult with each other to share good practice, ensure responses are consistent throughout NI and to save resources overall. Many stated that it would not be difficult to set up a hub of specialists with a pool of expertise across all the areas affecting trafficked children in NI.

Some respondents claim that social workers called out to airports and ports by UKBA/Border Force and/or the police do not appear to be routinely trained and experienced in identifying trafficked children or dealing with the complexities involved with trafficked children. Awareness of agreed good practice and guidance is low with the sole objective to place the child in "secure" accommodation, which is in itself problematic as 40 children previously went missing from NI care.⁴²⁶ An incident when a child went missing from a Bed & Breakfast and was later found in the Republic of Ireland resulted in trafficked children no longer being placed in such accommodation.

The use by social services of interim and full Care Orders, issued by the NI Family Courts, are also considered to be positive for trafficked children as they trigger the appointment of a guardian through the Northern Ireland Guardian Ad Litem Agency (NIGALA) who act on the child's instructions until the Care Order is discharged. This means that all children, including trafficked children, have a guardian to assist, advise and speak for them throughout family legal processes. NIGALA have not yet been involved with trafficked children who have gone through the CJS process. However, this could have a positive impact by ensuring that the child's voice is heard during criminal proceedings.

Conclusion

NI's response appears to fall behind the rest of the UK when it comes to prosecuting traffickers. While the PPS can only work with the referrals provided, there remains a considerable gap between the number of trafficked persons identified since implementation of the NRM and the number of trafficking

⁴²⁶ Department of Health, Social Services and Public Safety for Northern Ireland, WORKING ARRANGEMENTS FOR THE WELFARE AND SAFEGUARDING OF CHILD VICTIMS OF HUMAN TRAFFICKING (February 2011). Available at: www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare___safeguarding_of_child_victims_of_human_trafficking.pdf [last accessed 13 January 2012].

convictions of traffickers prosecuted when compared to the rest of the UK. Therefore, the PSNI must also take responsibility in relation to identifying and fully investigating trafficking to ensure the best evidence is obtained at the earliest possible opportunity, as robust criminal investigations are more likely to secure convictions. This includes increased support for trafficked persons before, during and after any trial. Given the numbers of victims identified in 2012, alongside the lack of successful prosecutions of traffickers in NI, the ideological stance that the trafficked person, and his or her human rights, remains at the forefront of PSNI operations seems implausible within the current framework. Serious questions need to be addressed in relation to how the PSNI and the PPS can meet their respective positive obligations in relation to victim identification, criminal investigation and subsequent prosecution of traffickers.

Specific recommendations for NI:

- **Introduce a single Trafficking and Modern Day Slavery Act ensuring support services and the non-criminalisation of trafficked persons.**
- **Improve PSNI training to identify all forms of trafficking, especially forced labour and child trafficking, and ensure training is mandatory for all police officers. Provide data on the current up-take of the e-learning tool.**
- **Consider the provision of specialist mental health/trauma training to raise awareness within the PSNI.**
- **Outline the process relating to obtaining a Victim Impact Statement to trafficked persons.**
- **Enhance prosecutor specialism to ensure more prosecutions for all forms of trafficking.**
- **Provide an advocate for victims to liaise with relevant professionals involved with a trafficked person referred to the NRM to enable victims to provide best evidence for prosecutions.**

Scotland⁴²⁷

The Scottish Parliament (SP) has legislative competence for policy domains integral to anti-trafficking. Specifically, the SP may legislate on, and the Scottish Government implement policy in, the areas of policing, criminal prosecution, services for victims, social work/child protection, and healthcare. Thus there is considerable scope for Scotland to develop a distinct strategy and approach. Moreover, the SP has responsibility in spheres which, whilst less pertinent to anti-trafficking efforts, are still relevant, including prisons, local government, and the legal profession. Areas such as asylum and immigration, revenue and customs, and international development are reserved to the legislative competence of the UK Parliament. However, UKBA, HMRC and the Department for International Development all have operations in Scotland.

More specifically, policing against trafficking is presently demarcated at the national strategic and force and operational levels respectively. The Director General of the Scottish Crime and Drug Enforcement Agency (SCDEA) is responsible for anti-trafficking across policing in Scotland. Scotland now has a single police force – Police Scotland, which has a National Human Trafficking Unit (NHTU) (under the auspices of Public Protection) who can provide specialist advice and support to law enforcement officers across Scotland. The Crown Office and the Procurator Fiscal Service (COPFS) are responsible for decisions on whether to prosecute and conduct criminal proceedings. The Trafficking Awareness Raising Alliance (TARA) project provides expert services to adult women trafficked for sexual exploitation, whereas Migrant Help are funded to assist all other trafficked persons.⁴²⁸

⁴²⁷ This section was written by Graham O'Neill for TARA.

⁴²⁸ However, whilst there is not yet policy consensus in Scotland on anti-trafficking work, the direction of travel is encouraging as reflected by the Scottish Government-convened *Summit* on trafficking in October 2012, from which a fresh strategic approach to the

Context

Considerable attention has been given in recent years to anti-trafficking in Scotland with a number of reports, action plans and assessments⁴²⁹ of significance, either focused on, or inclusive of, anti-trafficking in Scotland. These provide a repository of evidence on Scotland's trafficking problem based on extensive dialogue and consultation with stakeholders and, critically for insights, with trafficked persons. They have generated a shared perspective on where change is needed and what action should be taken. In particular, sustained political and governmental leadership is vital to create a strategic approach including the cooperation and coordination of key agencies and outside organisations; comprehensive trafficking offences bill; and a Scottish NRM and National Trafficking Care Standard.

Against this backdrop, Scotland has secured three convictions - one in September 2011, December 2012 and March 2013, after eight years of criminal legislation and no convictions. Not surprisingly this low return concerned GRETA in their evaluation of how Scotland was discharging its obligations and commitments under the Convention.⁴³⁰ Following these facts, the underlying aim of the research in Scotland was to obtain insight into how the Scottish CJS responds to trafficking, from which a small number of key findings and constructive recommendations are made. The research focused particularly on the prosecution of those suspected of committing trafficking or related offences, as well as those penalised, prosecuted, or punished for criminal offences that were a direct consequence of an individual's trafficking predicament. Through the evidence gathering process, three groups of issues emerged under which to organise the research insights, findings, and recommendations. They intertwine but for clarity they are: (a) awareness and identification; (b) intelligence and criminal investigation; and (c) criminal prosecution of trafficking and the non-penalisation, prosecution, and punishment of victims for their involvement in offences committed as a direct consequence of their trafficked situation. Issues of victim assistance, agency cooperation, and legislation were judged to be cross-cutting and so inform certain findings and recommendations.

Legislation

Trafficking is governed by s.22 of the Criminal Justice (Scotland) Act 2003 which mirrors the SOA except that "relevant" offences are limited to the exercise of control over prostitution or the making or production of obscene or indecent material. Labour trafficking is also regulated by s.4 of the AI(TC)A; and s.47 of the Criminal Justice and Licensing (Scotland) Act 2010 replicates the provisions set out in s.71 of the CJA for freestanding slavery, servitude and forced and compulsory labour offences. The Criminal Justice and Licensing (Scotland) Act 2010 was introduced to pre-empt the Directive's enactment in April 2013 by raising the age of automatic entitlement to special measures for child victims from 16 up to the age of 18; providing police with specific closing premise powers where associated with trafficking, extending the extra-territorial powers and, in addition, the ability to prosecute where exploitation is limited to benefit fraud.

problem may be developed, implemented through more systemic working developed across key agencies, and delivered by actions across awareness raising, training, and data analysis; in assistance for victims; and in legislation, law enforcement, and criminal prosecutions. Further, it will be very important that the Summit, its Anti-Trafficking Progress Group (ATPG), and the ATPG's short-life working groups focused on specific issues such as criminal prosecution, engage civil society and communities, are transparent, and proactively report to The Scottish Parliament on progress.

⁴²⁹ *Joint Action Plan on Tackling Trafficking*, Home Office / The Scottish Government, March 2007, updated in July 2008 and in October 2009; *Scotland's Slaves*, Amnesty International in Scotland, August 2008 (the Amnesty Report); *Trafficking in Scotland 2007/08*, The Scottish Government, April 2009 (the Scottish Government Research); *Wrong Kind of Victim*, Anti-Trafficking Monitoring Group, June 2010. (the ATMG Victim Report); *Inquiry on Migration and Trafficking*, The Equal Opportunities Committee, the Scottish Parliament, December 2010 (the EOC Report); *Scotland: a Safe Place for Child Traffickers*, Scotland's Commissioner for Children and Young People, March 2011 (the SCCYP Report); *Report of Inquiry into Trafficking in Scotland*, Equality and Human Rights Commission, November 2011 (the EHRC Inquiry); *Trafficking Intelligence Assessment*, Scottish Crime and Drug Enforcement Agency, November 2011 (the SCDEA Assessment); *All Change: Preventing Trafficking*, Anti-Trafficking Monitoring Group, May 2011. (the ATMG Prevention Report); *Evaluation of UK's implementation of the Council of Europe's Trafficking Convention*, GRETA, September 2012 (the GRETA Evaluation)

⁴³⁰ *Evaluation of UK's implementation of the Council of Europe's Trafficking Convention*, GRETA, September 2012 (the GRETA Evaluation) p.79.

Possibly in response to certain hurdles when prosecuting trafficking, the COPFS are advising on a potential new criminal aggravation of trafficking that would have a lower evidential threshold and may be used by judges to increase sentence against those convicted of a predicate offence that, nonetheless, has a trafficking dimension. Therefore easy to prove offences such as controlling prostitution or an assault with a trafficking element could potentially see an increase in sentences on these grounds. The model for such in Scotland is hate crime: where sentences for other offences may be increased if it is established the predicate offence was motivated by ill-will based on specific perceived or actual characteristics of the victim e.g. race, sexual orientation, disability etc. It is important to stress that this is an untested concept in criminal legislation on trafficking and it is unclear, if in the first instance the trafficking offence wasn't charged, what evidence or criteria would be required to demonstrate that trafficking has occurred. It is also unclear to what degree trafficking as an aggravating factor would increase sentencing to be proportionate to the crime committed and act as an effective deterrence.

Similar arguments put forward in relation to trafficking legislation in England and Wales have also been voiced over how Scots law manages trafficking offences. It was suggested that simplifying criminal definitions, extending criminal liability, and codifying human rights trafficking duties, will result in clearer, comprehensive, less scattered and potentially more practically useful legislation, ensuring compliance with treaty and case law commitments. Any new legislation will require input, support, and relentless application by the Lord Advocate and the COPFS.⁴³¹

Identification and investigations

Trafficking is often a hidden crime, and insofar as awareness remains low, it can only spread and thrive throughout Scotland's communities. Poor awareness in Scotland perpetuates a culture of disbelief among unspecialised CJS actors which is also a problem in Scotland. It was reported in the IDMG report that in October 2011 and April 2012, that Strathclyde Police, in conjunction with Crimestoppers, distributed about 10,000 trafficking awareness-raising leaflets in a targeted mail campaign within the Lanarkshire area. While commendable in effort, and where resources are scant it is good practice to target activities at a particular problem area, this is small in scale and therefore limited in scope. Learning from this pilot should inform continued awareness-raising across the whole of Scotland. Overcoming this knowledge gap implies a sustained proactive approach from those with the requisite platform both nationally, regionally and in their sectors. There was consensus on this across all the research participants who stated that public campaigns to raise basic trafficking awareness and customised trafficking training can assist. By its nature, trafficking is hard to understand, which is why awareness amongst Scottish professionals and, indeed, the Scottish public, are so very important.

The research heard evidence of frontline law enforcement officers failing to identify trafficked persons due to narrow and stereotypical perceptions of what they look like and the way they behave. Further, there was information obtained that, occasionally, frontline police officers on initial contact and before interviewing would directly enquire into the asylum or immigration status of a potential trafficked person, which suggests that if they were irregular this would colour the officers' opinion on the true source of the allegation. This requires the production of professional awareness-raising materials on trafficking and customised training which should be updated and regularly delivered to criminal justice groups to avoid inconsistencies in approach.

As late as September 2012 an e-learning package on trafficking was said to be trialled in September 2012 within the Scottish Police College before being rolled out across Scotland. This should be made mandatory for all officers and complimented by interactive workshop for police detectives who investigate trafficking. There was some other notable good practice in enhancing police capacity to

⁴³¹ The need for changes in how legislation in Scotland deals with trafficking has been articulated in various published material, including: (a) pp.63-65 of the EHRC Inquiry; (b) p.76 of the SCCYP Report; (c) p.358 of the State Department Report; and (d) p.5 of the SCDEA Assessment.

identify trafficked persons. A SCDEA multi-agency seminar on trafficking targeting 200 frontline officers from across the eight forces in Scotland, resulted in core trafficking indicators and messages distilled into a clear and helpful *aide memoir* which constitutes the back page of the police notebooks thus being easily accessible if potential trafficking is encountered. It has recently been distributed to 25,000 officers across Scotland.

In conducting the research, there was a sense that law enforcement agencies should more systematically involve the key victim services in Scotland in early cooperative initiatives at both the strategic and operational levels. For instance, the Police Service of Scotland will, from April 2013, inherit a repository of intelligence, analysis, and expertise on trafficking from the SCDEA. Moreover, it will benefit from the existence of and momentum established by the two-tier multi-agency law enforcement structure initiated by SCDEA from February 2012, designed to ensure systematic approaches, analysis and learning on trafficking are adopted by all law enforcement bodies operating in Scotland. Crucially, this seeks to integrate strategic policy and operational expertise on trafficking through both its *strategic leads* and *tactical leads* groups, respectively.

The ATMG recommends that this repository and two-tier structure is carried forward into the new Police Service and, critically, that it includes the two victim services in both groups in recognition of their professionalism and, vitally, to benefit from their strategic and operational advice on appropriate ways to engage with trafficked persons, as well as to ensure that they can plan sufficient support to pre-planned operations. Recently TARA has agreed to pilot early “intelligence” interviews with the NHTU and trafficked women. These women do not have to give their personal details at this stage and officers from the NHTU will meet the women in TARA offices with a TARA staff member present. Four of these have occurred and feedback from all has been positive.

Moreover, there is a need for the new Police Service to continue to broaden specialism on trafficking established in SCDEA’s dedicated trafficking team that integrates the functions of intelligence gathering, mapping, and analysis; conducting criminal investigations; and providing advice, guidance, and awareness-raising within the Police Service; and the specialism developed in Strathclyde Police force’s specialised vice and human trafficking team in Glasgow. This will assist in developing shared understandings in the Police Service and, critically, help ensure all operations and dealings with victims are led by and/or involve officers with the requisite knowledge and expertise of trafficking and how best to respond to trafficked persons.

Multi-agency working

Of equal importance is systemic cooperation, comprising multi-agency groups, information sharing, and, simply put, key professionals knowing, respecting, and learning to trust one another. The research learned of effective multi-agency cooperation, in specific cases, across law enforcement bodies and victims’ services. It is no coincidence that the only two convictions in eight years of criminal legislation on trafficking were based on such efficient cooperation, mainly between police, COPFS, and victims’ services, as well as with UK bodies such as SOCA and UKBA, devolved agencies like the Police Service of Northern Ireland, and international bodies such as INTERPOL.

Successful convictions in Scotland

In September 2011, the first conviction from Operation Factor was secured under the Scots law offence of trafficking into prostitution.⁴³² In *R v Stephen Craig and Sarah Beukan*,⁴³³ the accused, both Scots, plead guilty before trial and received seemingly low sentences of 3.6 years and 1.5 years

⁴³² Section 22 Criminal Justice (Scotland) Act 2003.

⁴³³ *R v Craig and Beukan* at Glasgow Sheriff Court, 3 October 2011.

respectively. In addition to custodial sentences, a confiscation order was granted for £45,000 to be paid within six months against Craig.⁴³⁴ However, there was no mention of compensation for the victims either by way of a compensation order or through CICA.

The second convictions were in December 2012 under the UK offence of trafficking into exploitation for the purpose of sham marriages.⁴³⁵ This case involved three Slovaks who denied the charges but were found guilty and each received a three-year custodial sentence. Recently in *HMA v Kupka and Others* concerning trafficking for benefit fraud,⁴³⁶ three defendants were found guilty of fraud and assault. Kupka received four years' imprisonment, Rondos three years and three months' imprisonment, and Fojtik two years and three months' imprisonment. These sentences again are low and therefore it can be argued that none of these sentences are likely to dissuade profit-hungry and hardened traffickers from committing such crimes. It should also be noted that there have been more than 20 successful prosecutions of suspected traffickers for other criminal offences such as living off immoral earnings, keeping brothels, and deception.

Prosecuting trafficking

The research did not benefit from evidence from the COPFS as they disappointingly decided after initial acceptance not to participate in this research. However, it is known that the COPFS are active in Scotland and are putting significant effort into prosecuting trafficking as demonstrated by its role in the above convictions that included work by its Victim Information and Advice Service. Furthermore, the COPFS produced a helpful victim leaflet which explains the criminal justice process.

In terms of structure and guidance, it was reported that the COPFS appointed an advocate depute in the Sexual Crimes Unit as the Scottish lead for trafficking. The COPFS has also published 2010 guidance on trafficking offences to coincide with some prosecutors being specifically trained in trafficking by other agencies within COPFS. Training for prosecutors who specialise in sexual offences also contained trafficking for sexual exploitation but not other forms. All of which is helpful, however, the guidance has not been updated since it was published in October 2010, despite the fact that there is new relevant case law in England and Wales and the new Directive took full effect from April 2013.

Furthermore, it could not be ascertained if updated training has been implemented and those specialist prosecutors are still employed by COPFS. It would appear that the low number of prosecutions originates from a low number of cases investigated by the police or cases which involve poor evidence gathering, which are passed to COPFS. This was a concern that was raised by the Lord Advocate in oral evidence to the Scottish Parliament Equal Opportunities Committee in 2010. However, if police activity on trafficking is to gather momentum in the future, prosecutors must have the most up-to-date skill set with knowledge of good practice accumulating in the rest of the UK, so that when these cases are eventually received they are dealt with effectively.

It is recommended that, to promote Scotland-wide proactive identification of traffickers and victims by their staff, the COPFS deepen and widen its specialism on trafficking through systematic awareness-raising and updated customised training on all forms of trafficking, for key staff both centrally and across its Federations. The COPFS should also update its public guidance to ensure it reflects all relevant domestic legislation, key international legal instruments and case law.

⁴³⁴ BBC News, 'Cash seized from convicted sex trafficker Stephen Craig' 10 July 2012. Available at: <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-18783948> [last accessed 11 March 2011].

⁴³⁵ *HMA v Kulova and others*, at Dundee Sheriff Court, 14 January 2013.

⁴³⁶ *HMA v Kupka and others*, at Glasgow Sheriff Court, 20 March 2013.

In addition, NGOs in Scotland reported instances where traffickers represented themselves in Employment Tribunals and cross-examined their victims who had been trafficked for their labour.⁴³⁷ This needs to be addressed as a matter of urgency if Scotland is to truly adhere to a victim-centred approach and prevent further breaches of the Convention and Directive with regard to anonymity and victim protection through special measures.

Non-criminalisation of trafficked persons

Most seriously, was information of potential victims of trafficking - including children - being penalised and held in young offenders' institutions or prisons on remand with some also being convicted of crimes that may have been committed under duress and as a consequence of their trafficking. This seems, in particular, to be a problem for Chinese or Vietnamese persons being exploited by organised criminals of their own national origin with, in at least some instances, their being debt-bonded and transported to different parts of Scotland, to farm cannabis in residential or disused industrial locations, while being controlled through a lack of pay, social isolation, and living in primitive and often unsafe conditions.⁴³⁸ The COPFS should ensure in terms of guidance, policy, and practice, that proactive efforts are made to be cognisant of indicators of potential trafficking, ensuring issues relating to the accused being credible trafficking victims informs public interest decisions on whether to prosecute; as well as to be alert to patterns in trafficking generally and in particular, trafficking into the exploitation of criminal activities.

Conclusion

Sustained proactivity in awareness-raising, intelligence gathering, and investigation and prosecution; systematic inter and multi-agency cooperation; and a genuinely victim-centred approach are necessary but this research found that they are only sporadically embedded in Scotland's criminal justice response. So, whilst there has been progress, most notably with SCDEA's pioneering effort to integrate the Scottish law enforcement response to this crime, there is a challenge for the new Police Service of Scotland, the COPFS, and ultimately the Scottish Government, to retain and enhance this approach. Anything less would constitute regression. Further, enhanced cooperation would reflect the formal involvement of those responsible for assisting victims, presently TARA and Migrant Help, which can only promote a specialisation and victim-centred approach resulting in an effective criminal justice response to trafficking in Scotland. Victims are, unfortunately, at the centre of trafficking so, it follows, in principle and in practice that they should be at the centre of how we respond to it.

Specific recommendations for Scotland:

- **Ensure professional awareness-raising for all frontline staff**
- **Produce and update customised training material which includes non-criminalisation and deliver it to key criminal justice groups.**
- **Develop, in collaboration with experienced service providers, a standard policy for police interactions with potentially trafficked persons.**
- **Include service providers in the strategic/operational two-tier structure to benefit from their advice on how best to engage and build trust with trafficked persons.**
- **Create a dedicated trafficking team that conducts trafficking investigations; and provide advice, guidance, and awareness-raising within the new Police Service.**
- **Ensure COPFS guidance is updated to reflect relevant domestic legislation, the Directive and case law.**
- **Ensure that witness protection is implemented in all court cases involving trafficking.**

⁴³⁷ GRETA, *supra* note 87, p.81 para. 366.

⁴³⁸ Despite successful detection of hundreds of cannabis farms across Scotland since 2006 through the Strathclyde and then SCDEA-led Operation League; and the SCDEA's national intelligence assessment from November 2011 stating that Chinese and Vietnamese nationals in the UK with no leave to remain are particularly vulnerable to trafficking; it is startling and concerning there has been very few if any CJS identifications that at least some Chinese or Vietnamese farmers detected and most seriously convicted in Scotland may well, in fact, be victims of trafficking who actually committed this offence under duress.

Conclusion and Recommendations

The ATMG found examples of good practice in prosecuting trafficking emerging across the UK since 2009. However, these are small in scale, isolated and are often linked to areas where specialism and international partnerships have been developed. The existing good practice should be brought to the fore and integrated into a robust criminal justice response across the whole of the UK. In developing such a response, and to improve the criminal justice system's capacity to tackle this crime, the UK would be greatly assisted by the introduction of an Anti-Trafficking Commissioner – an statutory body which could provide critical perspective and independent advice on how the diverse efforts, including by criminal justice system actors, should be undertaken and coordinated to maximise the impact of the limited resources available. The evidence presented in previous research by the ATMG (*Wrong kind of victim?* 2010 and *All Change*, 2012) also led to the conclusion that an Anti-Trafficking Commissioner is necessary to ensure an effective response to trafficking upholding rule of law principles. The need for an Anti-Trafficking Commissioner is also a recommendation of the EU Directive.

Awareness about the manifestations of trafficking, the nature of the crime, its impact on victims and knowledge of the law were key to cases where traffickers were successfully brought to justice. Nonetheless, the research found that awareness of the issue is still inconsistent across the UK. This can be attributed to a number of factors, including piecemeal legislation, and the low priority attached to policing trafficking as well as a lack of specialists.

The challenge remains to ensure that the UK's obligations are met under the Convention and the Directive to adequately legislate, investigate the crime, punish the perpetrators and protect the victims.

The ATMG finds that the current anti-trafficking laws do not provide an adequate framework to successfully bring traffickers to justice. Individual trafficking offences remain underutilised due to a low awareness, a lack of clarity or perceived evidential difficulty. Furthermore, the current legislation does not articulate the protection of the rights of trafficked person as required by the Convention. Hence, to remedy this, a unified piece of legislation under an Anti-Trafficking Act should be given serious consideration.

Whilst the positive obligation to investigate trafficking has been established in law, there is still a discrepancy between the number of potential trafficked persons identified and the number of prosecutions of traffickers. Recent budgetary cuts may have had an impact on CJS capacity, however, the problems identified in the research are predominantly structural.

The most worrying finding of the research was that a significant number of victims continue to be prosecuted for offences they have committed as a direct consequence of their trafficking. This is not only a significant breach of the UK's obligation to protect victims, but a key factor that contributes to the impunity of traffickers and perpetuates the crime.

The ATMG recognises that since 2009, the UK has made significant progress in addressing trafficking. Nevertheless, in order to make the UK a truly hostile environment for traffickers and to fully comply with the requirements of the Convention and Directive, systemic change needs to occur.

Based on the results of the research, below are some key recommendations to improve the UK's ability to counter the crime of trafficking:

RECOMMENDATIONS

OVERALL

Introduce a UK Anti-Trafficking Commissioner, an independent body with statutory powers to request data and information, to examine the trends and changing nature of the trafficking crime and to recommend a focused and efficient strategy to combat this crime.

LEGISLATION

- Promote the use of trafficking offences as the principal offence in all cases relating to trafficking.
- Clarify what trafficking “within” the UK constitutes to aid CJS actors’ understanding of internal trafficking.
- Enact a single Act covering revised human trafficking and other forms of contemporary slavery offences and victim protections (including a non-criminalisation provision).
- Create a unified data collection system that includes all prosecutions and convictions of traffickers, regardless of the final offence charged. Also, disaggregate data by age and gender.
- Publish disaggregation of CPS flagged data for a more transparent analysis of the offences traffickers are convicted under.

IDENTIFYING TRAFFICKING ON THE FRONTLINE

- Ensure all frontline police, including front desk staff, receive mandatory basic trafficking training complemented by regular updates to reflect changes in traffickers’ *modi operandi*.
- Guidance should be readily available at all police stations to stop the practice of declining assistance to trafficked persons wishing to report trafficking.
- Ensure such training includes competencies to understand the physical and psychological impacts of trafficking, including providing a trauma-informed response and how to establish meaningful communication with trafficked persons.

INVESTIGATING TRAFFICKING

- Incorporate a confidentiality waiver box to NRM referral forms and ensure UKBA regularly shares trafficker information and intelligence held on its files with the police.
- Reassess UKBA’s Competent Authority role given perceived obstructions to investigating trafficking.
- Ensure that all investigators working on trafficking cases have undergone trafficking investigation training.
- Ensure the new investigator training package is gender sensitive and trauma-informed.
- Consider appointing a single named contact who can provide the victim with timely and comprehensive updates.
- Create and uphold memorandums of understanding between the police and service providers to agree information sharing protocols, working relationships, roles and responsibilities.
- Form and maintain specialist anti-trafficking units. A single specialist unit operational across England and Wales, similar to the Scottish model, should be considered.
- Trafficking shall be made a priority by making it a distinct category among policing targets set by the Home Secretary.

MULTI-AGENCY AND INTERNATIONAL PARTNERSHIPS

- Promote the sharing of intelligence on trafficking between all governmental agencies.
- Promote the JIT model amongst police forces and explore EU funding channels.
- The UK should not undertake the “2014 Opt-Out” and keep the EU policing and justice measures in place uninterrupted.

CRIMINAL PROCEEDINGS

- Ensure that all CPS lawyers, prosecuting advocates, judges and VLUs receive training on trafficking laws and the nature of the crime.
- Develop specialist CPS lawyers and judges, similar to the *rape-ticketed* model.
- Issue detailed sentencing guidance for all trafficking and forced labour related offences.
- Ensure that trafficked persons are supported throughout and after criminal proceedings. Readily provide, where necessary, efficient special measures including witness protection.

NON-CRIMINALISATION OF TRAFFICKED PERSONS

- Provide training to CPS caseworkers enabling them to identify trafficking indicators and appropriately respond to such cases.
- ACPO to issue guidance, without delay, on the treatment of suspects that may be trafficked persons.
- Implement the Convention and Directive provisions through legislation rather than policy and preferably include this provision as a specific section within a single Anti-Trafficking Act.
- Issue guidance for prisons on identification and treatment of prisoners who may be trafficked persons.

PROSECUTING CHILD TRAFFICKING

- Bring UK trafficking legislation in line with the Convention and Directive's definition of children as under 18s, and clarify the word "young" in Section 4(4)(d) of the AI(TC)A replacing it with under 18s to avoid practitioner confusion in application and scope. This should be subsequently included in a comprehensive Act covering human trafficking and other forms of modern day slavery.
- Ensure all suspected cases of child trafficking are investigated fully, strictly utilising s.47 of the Children Act 1989 to trigger multi-agency inquiries and ensure the prosecution of an offence for a sufficient period of time after the trafficked child has turned 18.
- Introduce mandatory child-specific trafficking training for frontline staff that is reviewed and updated regularly to improve identification of trafficked children and safeguarding responses.
- Increase proactive police investigations into child trafficking supported by increased government resources, and increase the use of victimless prosecutions in child trafficking cases.
- Appoint a legal guardian to each suspected trafficked child in order to act in the child's best interests and to act as a link between the multiple agencies involved in prosecuting child trafficking.
- Ensure age assessments on unaccompanied children follow the "benefit of the doubt" principle at all times with input from multi-agency actors.
- Conduct an audit of key typologies of forced criminality trafficked children groups in prisons/YOIs/detention centres with the aim of reviewing their convictions in partnership with the Criminal Cases Review Commission.

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Annex I: Trafficking and other forms of exploitation offences

Sexual Offences Act 2003

57 Trafficking into the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in, or the entry into, the United Kingdom of another person (B) and either -

(a) he intends to do anything to or in respect of B, after B's arrival but 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, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

58 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.

(2) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

59 Trafficking out of the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either -

(a) he intends to do anything to or in respect of B, after B's departure but 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, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

60 Sections 57 to 59: interpretation and jurisdiction

(1) In sections 57 to 59, "relevant offence" means -

- (a) an offence under this Part,
 - (b) an offence under section 1(1)(a) of the Protection of Children Act 1978 (c. 37),
 - (b)(a) an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008,
 - (c) an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
 - (d) an offence under Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)), or
 - (e) anything done outside England and Wales and Northern Ireland which is not an offence within any of paragraphs (a) to (d) but would be if done in England and Wales or Northern Ireland.
- (2) Sections 57 to 59 apply to anything done whether inside or outside the United Kingdom.

Protection of Freedoms Act 2012

Changes to Sections 57 – 58: 59A Trafficking people for sexual exploitation

S.109 Trafficking people for sexual exploitation

- (1) The Sexual Offences Act 2003 is amended as follows.
- (2) For sections 57 to 59 (trafficking people for sexual exploitation) substitute -
 “59A Trafficking people for sexual exploitation
- (1) A person (“A”) commits an offence if A intentionally arranges or facilitates -
- (a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),
 - (b) the travel of B within the United Kingdom or another country, or
 - (c) the departure of B from the United Kingdom or another country, with a view to the sexual exploitation of B.
- (2) For the purposes of subsection (1)(a) and (c) A’s arranging or facilitating is with a view to the sexual exploitation of B if, and only if -
- (a) A intends to do anything to or in respect of B, after B’s arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) A believes that another person is likely to do something to or in respect of B, after B’s arrival, entry or (as the case may be) departure but in any part of the world, which if done will involve the commission of a relevant offence.
- (3) For the purposes of subsection (1)(b) A’s arranging or facilitating is with a view to the sexual exploitation of B if, and only if -
- (a) A 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) A 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.
- (4) A person who is a UK national commits an offence under this section regardless of -
- (a) where the arranging or facilitating takes place, or
 - (b) which country is the country of arrival, entry, travel or (as the case may be) departure.
- (5) A person who is not a UK national commits an offence under this section if -
- (a) any part of the arranging or facilitating takes place in the United Kingdom, or
 - (b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.
- (6) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(7) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.”

(3) For subsection (1) of section 60 (sections 57 to 59: interpretation) substitute -

“(1) In section 59A -

“country” includes any territory or other part of the world;

“relevant offence” means -

(a) any offence under the law of England and Wales which is an offence under this Part or under section 1(1)(a) of the Protection of Children Act 1978, or

(b) anything done outside England and Wales which is not an offence within paragraph (a) but would be if done in England and Wales;

“UK national” means -

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

(4) Omit section 60(2) (sections 57 to 59: jurisdiction).

(5) Accordingly, the title of section 60 becomes “Section 59A: interpretation”.

Asylum and Immigration Act 2004

Section 4 Trafficking people for exploitation

(1) A person commits an offence if he arranges or facilitates the arrival in the United Kingdom of an individual (the “passenger”) and -

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and -

(a) he intends to exploit the passenger in the United Kingdom or elsewhere, or

(b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and -

(a) he intends to exploit the passenger outside the United Kingdom, or

(b) he believes that another person is likely to exploit the passenger outside the United Kingdom.

(4) For the purposes of this section a person is exploited if (and only if) -

(a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),

(b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),

(c) he is subjected to force, threats or deception designed to induce him -

(i) to provide services of any kind,

- (ii) to provide another person with benefits of any kind, or
- (iii) to enable another person to acquire benefits of any kind, or
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that -
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable -
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

Protection of Freedoms Act 2012

Changes to Section 4 - 110 Trafficking people for labour and other exploitation

- (1) The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 is amended as follows.
- (2) For subsections (1) to (3) of section 4 (trafficking people for labour and other exploitation) substitute -
 - “(1A) A person (“A”) commits an offence if A intentionally arranges or facilitates -
 - (a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),
 - (b) the travel of B within the United Kingdom or another country, or
 - (c) the departure of B from the United Kingdom or another country, with a view to the exploitation of B.
 - (1B) For the purposes of subsection (1A)(a) and (c) A’s arranging or facilitating is with a view to the exploitation of B if (and only if) -
 - (a) A intends to exploit B, after B’s arrival, entry or (as the case may be) departure but in any part of the world, or
 - (b) A believes that another person is likely to exploit B, after B’s arrival, entry or (as the case may be) departure but in any part of the world.
 - (1C) For the purposes of subsection (1A)(b) A’s arranging or facilitating is with a view to the exploitation of B if (and only if) -
 - (a) A intends to exploit B, during or after the journey and in any part of the world, or
 - (b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.”
- (3) In section 4(4) -
 - (a) in paragraph (b) -
 - (i) omit “under the Human Organ Transplants Act 1989 (c. 31) or”, and
 - (ii) after “2004” insert “as it has effect in the law of England and Wales”,
 - (b) in that paragraph, the words from “as a result” to the end of the paragraph become sub-paragraph (i), and
 - (c) after that sub-paragraph insert “or
 - (ii) which, were it done in England and Wales, would constitute an offence within sub-paragraph (i),”.
- (4) After section 4(4) insert -
 - “(4A) A person who is a UK national commits an offence under this section regardless of -
 - (a) where the arranging or facilitating takes place, or

(b) which country is the country of arrival, entry, travel or (as the case may be) departure.

(4B) A person who is not a UK national commits an offence under this section if -

(a) any part of the arranging or facilitating takes place in the United Kingdom, or

(b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.”

(5) Omit section 5(1) (section 4: jurisdiction).

(6) In section 5(3) (section 4: interpretation) -

(a) for “In section 4(4)(a)” substitute “In section 4 -

“country” includes any territory or other part of the world,”,

(b) the words from ““the Human Rights Convention” to the end of the subsection become the next definition in a list, and

(c) after that definition insert -

““UK national” means -

(a) a British citizen,

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom, or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.”

Coroners and Justice Act 2009

Section 71 Slavery, servitude and forced or compulsory labour

(1) A person (D) commits an offence if -

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

(4) In this section -

“Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

“the relevant period” means -

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

Annex II: Trafficking prosecutions and convictions since 2009

The cases presented below were collated by examining newspaper articles and police press releases and extracting relevant information. We attempted to present the most accurate information; however, the method used to gather this information means that there may be inaccuracies: not all of the trafficking prosecutions and convictions since 2009 are contained in the table as some trafficking cases did not receive any publicity; and some of the information on the case may have been omitted. Whilst we have endeavoured to reflect the correct sentences, caution should be observed as the defendant/s may have appealed or are appealing their sentence. Also, it should be noted that where the defendant pleaded guilty they would have received a reduction in their sentence. There are also prostitution cases dealt with under trafficking offences in the table. We hope that this information will act as a rough guide for practitioners.

Key for table

(PG) = Pleaded Guilty to some or all of the charges
 S.57 of the SOA = Trafficking into the UK for sexual exploitation
 S.58 of the SOA = Trafficking within the UK for sexual exploitation
 S.59 of the SOA = Trafficking out of the UK for sexual exploitation
 S.4 of the AI(TC)A = Trafficking for non-sexual exploitation
 S.71 of the CJA = Slavery/Servitude/Forced & Compulsory labour
 Conspiracy offences do not show up in current statistics on trafficking

| Year | Defendant/s | Type | Police force/ Operation/arrest | Convicted offences | Sentence/ Confiscation order | Court, Judge & Prosecutor |
|------|--------------------|--------|--|---|------------------------------------|--|
| 2009 | Renata Kuznecovova | Sexual | Devon & Cornwall Pentameter 2008 | (PG) S.57 of the SOA, keeping a brothel | 2yrs | Exeter Crown Court Judge Sarah Munro QC Jim Bennett |
| | Alexander Kuznecov | | | (PG) Keeping a brothel | 1.5yrs | |
| 2009 | Kennedy Johnson | Sexual | SOCA/UKBA 2008 | (PG) Conspiracy - assisting unlawful immigration | 6yrs | Croydon CC |
| 2009 | Lei Zhang | Sexual | Pentameter 2008 | S.57 of the SOA, keeping a brothel, controlling prostitution for gain, converting criminal property | 4yrs/£1 | Plymouth CC Judge Paul Darlow Anthony Donne QC |
| | Feng Jiang | | | (PG) S.57 of the SOA, keeping a brothel, controlling prostitution for gain | 51wks suspended for 2yrs | |
| 2009 | Cai Hong Yang | Sexual | Cheshire Pentameter 2008 | (PG) S.57 of the SOA, keeping a brothel, controlling prostitution for gain, benefit fraud | 20mths/£42,095 | Chester CC Judge David Hale |
| 2009 | Cheung Zhao Su | Sexual | West Mercia Assam 2008 | (PG) S.58 of the SOA, controlling prostitution for gain | 4.5yrs | Hereford CC Judge Daniel Pearce-Higgins Laura Hobson |
| | Ziquian Liu | | | (PG) S.58 of the SOA, controlling prostitution for gain | 2.5yrs | |
| | Bochao Nan | | | Keeping a brothel | 2yrs & 9mths | |

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|------|------------------------------|--------|---------------------------------------|--|---------------------------|--|
| 2009 | Istvan Kalocsai (Snr) | Sexual | Met Icefall 2009 | S.57 of the SOA | 6.5yrs | Inner London CC |
| | Istvan Kalocsai (Jnr) | | | S.57 of the SOA, controlling prostitution for gain | 5.5yrs | |
| | Istvanne Kalocsai | | | Controlling prostitution for gain | 3yrs | |
| 2009 | Costel Maruntelu | Sexual | Greater Manchester Pantin 2000 | (PG) S.57 of the SOA | 5.5yrs | Manchester CC |
| 2009 | Jutamas T Songglin | Sexual | Devon & Cornwall Celsius 2008 | (PG) S.57 of the SOA, using a false instrument or a copy of a false instrument | 4yrs | Plymouth CC Judge Francis Gilbert QC Andrew Oldland |
| | Vithool Gomart | | | (PG) S.57 of the SOA | 3.5yrs | |
| | Chananchida Chankaeo | | | (PG) Causing or inciting prostitution for gain | 2yrs | |
| | Yu Ming Lee | | | (PG) S.57 of the SOA, controlling prostitution for gain; acquisition, use or possession of criminal property | 4yrs | |
| | Mee Wong | | | (PG) Keeping a brothel | 3.5yrs | |
| | Jarawee Faknak | | | (PG) S.58 of the SOA | 6yrs | |
| | (2008) Oranong Biscoe | | | Money laundering, running an unlicensed bank | 4yrs /£154,346 | |
| 2009 | Bertalan Lakatos | Sexual | MPS Human Trafficking Team 2008 | S.57 of the SOA, controlling prostitution for gain, ABH | 5yrs | Blackfriars CC |
| 2009 | Anbanaden Chellapermal | Labour | Sussex Standen 2008 | S.4 of the AI(TC)A | 2yrs/£450,000 | Chichester Crown Court Judge Robert Fraser David Scutt |
| | Shamila Seenyen-Chellapermal | | | S.4 of the AI(TC)A | 2yrs | |
| 2009 | Razvan Constandache | | Greater Manchester 2009 | (PG) Ss.57 & 58 of the SOA, controlling prostitution for gain | 5.5yrs | Manchester CC Judge Clement Goldstone |
| | Toma Ienei | | | (PG) Ss.57 & 58 of the SOA, controlling prostitution for gain | 5.5yrs | |
| | Ioan Macicasan | | | (PG) Ss.57 & 58 of the SOA, controlling prostitution for gain, ABH | 4.5yrs | |
| | Renata Vas | | | (PG) Controlling a prostitute for gain | 2yrs | |
| | Adrian Szalasc | | | (PG) S.58 of the SOA, controlling prostitution for gain | 3.5yrs | |
| | Ian Strong | | | (PG) S.58 of the SOA | 2yrs | |
| 2009 | Edita Tavoraite | | SOCA Adject 2008 | S.58 of the SOA, control of prostitution for gain | 3.5yrs | Preston CC Judge Brown |
| | Tafil Kadria | | | S.58 of the SOA, control of prostitution for gain | 13 yrs | |
| | Xhevdet Cikaj | | | S.57 and 58 of the SOA, control of prostitution for gain | 12 yrs | |
| | Lavdrim Cikaj | | | Controlling prostitution for gain, possession of identity documents with intent | 3 yrs | |
| 2009 | Atchara Nualpenyai | Sexual | MPS Leonberger 2008 | (PG) S.57 of the SOA, controlling prostitution for gain, possessing Class A drugs | 5yrs (on appeal from 6.5) | Croydon Crown Court |

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|------|----------------------|------------------|---|---|---|---|
| 2009 | Stefan Mocanu | Sexual/ Child | | S.57 of the SOA, controlling prostitution for gain | 6yrs | Hove CC Judge Richard Hayward |
| 2009 | Piotr Krupa | Sexual | Devon & Cornwall 2008 | (PG) S.57 of the SOA, controlling prostitution for gain, keeping a brothel | 5yrs/ Sex Offenders' Register | Plymouth CC Judge Francis Gilbert Andrew Maitland |
| | Michael Barcicki | | | (PG) S.57 of the SOA, keeping a brothel | 20mths/ Sex Offenders' Register | |
| 2009 | Marcel Dunka | Sexual/ Child | South Yorkshire/UKBA Reservoir 2008 | Ss.57 and 58 of the SOA, false imprisonment, causing child prostitution, controlling a child prostitute, causing or inciting a child to engage in sexual activity | 17yrs | Sheffield CC Judge Roger Keen |
| | Alzbeta Dunkova | | | S.57 and 58 of the SOA, false imprisonment, causing child prostitution, controlling a child prostitute | 14yrs (on appeal from 16yrs) | |
| | Roman Dunka | | | S.57 and 58 of the SOA, false imprisonment, causing child prostitution, controlling a child prostitute | 17yrs | |
| 2009 | David Greenwood | Sexual/ Child | Greater Manchester | (PG) Keeping a brothel | 20mths | Manchester CC |
| 2010 | Cezar Livius Murariu | Sexual | MPS | Rape, controlling prostitution for gain | 10yrs | Southwark CC HHJ Price Alex Lewis |
| 2010 | Vasile Oaches | | MPS | S.57 of the SOA, controlling prostitution for gain | 3yrs (increased from 2.5yrs by Attorney General) | Croydon Crown Court |
| | Vasile Maris | | | S.57 of the SOA, controlling prostitution for gain | 4yrs (increased from 3.5yrs by Attorney General) | |
| | Gheorghe Mihali | | | Controlling prostitution for gain | 1yr | |
| 2010 | Raymond Walker | Sexual/ Child | Nottingham | (PG) Procuring a woman to become a common prostitute | 3yrs & 4mths | Nottingham CC Jim Metcalf Recorder Shaun Smith |
| 2010 | Wayne Baker | Sexual | Gwent | (PG) Controlling child prostitution, keeping a brothel, assault | 11yrs | Newport CC |

| | | | | | | |
|------|--------------------|----------------------|-------------------------------------|---|---|---|
| | | | 2009 | causing actual bodily harm, supplying a controlled drug to another, making and taking indecent photographs of a child | | Judge David Morris Elwen Evans QC |
| 2010 | Thomas Carroll | Sexual | SOCA Pentameter/Palladic 2008 | (PG) Controlling prostitution for gain, money laundering | 5yrs/ £1,902,496 | Cardiff Crown Court Judge Neil Bidder Robert Davies |
| | Shamiela Clark | | | (PG) Controlling prostitution for gain, money laundering | 3.5yrs | |
| | Toma Carroll | | | (PG) Money laundering | 2yrs | |
| 2010 | Martin Bruschi | Sexual | Kent and Essex 2010 | (PG) S.57 and 58 of the SOA | 8yrs (reduced on appeal from 10yrs) | Maidstone CC |
| | Dusan Horvat | | | (PG) S.57 and 58 of the SOA | 8yrs (reduced on appeal from 10yrs) | |
| | Ivan Gujda | | | (PG) S.57 of the SOA | 3yrs | |
| 2010 | Marokh Jamali | Sexual/Child & Adult | MPS SCD9 Bluebok 2010 | (PG) Conspiracy to traffick and to incite prostitution for gain | 2yrs & 9mths | Harrow Crown Court Bill McGivern |
| | Sara Bordbar | | | (PG) Conspiring to traffick and to incite prostitution for gain | 2yrs & 3mths | |
| | Fatima Haghnegat | | | (PG) Conspiring to traffick and to incite prostitution for gain | 2yrs & 6mths | |
| | Rassoul Gholampour | | | (PG) Conspiring to traffick | 2yrs & 9mths | |
| 2010 | Speranta Mihai | Labour/ Child | MPS 2009 Golf | (PG) Child cruelty | 2.5yrs | Reading CC Judge Stephen John Gareth Branston |
| | Gheorghe Mihai | | | (PG) Child cruelty, fraud, money laundering | 2.5yrs | |
| 2010 | Joszeif Budai | Sexual | MPS 2009 | Conspiracy - S.57 of the SOA, controlling prostitution for gain | 8yrs | Croydon CC Judge Simon Pratt |
| | Andrea Novak | | | Conspiracy - S.57 of the SOA, controlling prostitution for gain | 8yrs | |
| 2010 | Lukasz Adamowicz | Labour | UKBA S.Yorkshire | (PG) Conspiracy - S.57 of the SOA | 4yrs | Sheffield CC Recorder Martin Simpson |
| | Jerzy Bala | | | (PG) Conspiracy - S.58 of the SOA | 2yrs | |
| 2010 | Raza Ali Khan | Labour | UKBA N.Yorkshire Keepnet 2008 | S.4 of the AI(TC)A | 4yrs (raised from 3yrs on appeal) | Leeds CC Judge Geoffrey Marson Christopher Tehrani |
| | Shahnawaz Ali Khan | | | S.4 of the AI(TC)A | 4yrs (raised from 3yrs on appeal) | |
| | Parveen Khan | | | S.4 of the AI(TC)A | 3yrs | |
| 2010 | Hanh Van Vu | Labour | UKBA 2009 | Obtaining property by deception, making false declaration of marriage, transferring and concealing criminal property | 11yrs | Northampton CC Judge Richard Bray Matthew Lowe |
| | Duc Thi Vu | | | (PG) perjury, using a false instrument and making an untrue statement to obtain a passport | 2yrs | |

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|------|-------------------------------|------------------|--------------------------------------|---|---|--|
| 2010 | Michael Dalton | Sexual | MPS Icefall 2009 | Conspiracy - S.58 of the SOA, control of prostitution for gain, money laundering | 3yrs | Croydon CC His Honour Judge Flahive |
| | Nikki Chen | | | (PG) S.58 of the SOA, control of prostitution for gain, money laundering | 2.5yrs | |
| | Manjit Singh | | | (PG) Conspiracy - S.58 of the SOA | 12mth suspended for 2yrs | |
| | Ian Garrett | | | (PG) Conspiracy - S.58 of the SOA | 12mth | |
| 2011 | Rebecca Balira | Labour | | S.71 of the CJA (servitude), common assault | 6mths/ £3,000 in compensation | Southwark CC Judge Nicholas Loraine-Smith Caroline Haughey |
| 2011 | Tomasz Sebastian Slabaszewski | Sexual | Wiltshire 2009 | S.57 of the SOA | 2yrs | Swindon CC |
| | Jacek Stanislaw Sokolowski | | | Rape, S.57 of the SOA | 7yrs | Judge Euan Ambrose |
| 2011 | Lucy Adeniji | Labour | MPS Paladin 2010 | Child cruelty, assisting unlawful immigration, dishonestly obtaining property by deception, ABH | 11.5yrs | Isleworth CC Judge Simon Olive Timothy Luke Starkey |
| 2011 | Bogdan Nejloveanu | Sexual | Greater Manchester Pantin 2009 | Conspiracy - S.57 of the SOA, Controlling a prostitute for gain | 9yrs (increased on appeal from 6yrs) | Manchester CC Judge Robert Atherton Rachel Smith |
| | Marius Nejloveanu | | | Rape, conspiracy - S.57 of the SOA, sexual assault, controlling a prostitute for gain, conspiracy to pervert the course of justice, causing a person to engage in sexual activity without consent | Indeterminate Sentence with 10yrs and 6mths min (increased from 21yrs) | |
| 2011 | Anthony Harrison (32) | Sexual/ Child | MPS Quartzire 2010 | Conspiracy - S.59 of the SOA, false imprisonment, conspiracy to facilitate illegal immigration | 20yrs | Woolwich CC Judge Philip Shorroch Riel Karmy-Jones |
| 2011 | Arvinder Singh Khera (45) | Sexual | Leicestershire 2010 | (PG) Kidnap | 2yrs & 8mths | Leicester CC Judge Alasdair Darroch |
| | Abdul Farooqui (47) | | | (PG) Kidnap | 2yrs & 8mths | |
| | Gurdeep Singh Sandhu (28) | | | (PG) Kidnap | 2yrs | |
| | Harjit Singh Dhaliwal (35) | | | (PG) Kidnap | 2yrs & 8mths | |
| | Amarjit Lal (45) | | | (PG) Unlawful imprisonment | 2yrs | |
| | Gurpreet Singh (32) | | | (PG) Unlawful imprisonment | 18mths | |
| 2011 | Nerijus Lekečinskis | Sexual | Norfolk | Rape, s.58 of SOA, controlling prostitution | 11yrs | Norwich CC |

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|------|------------------------------|------------------|----------------------------|--|---|--|
| | Skirmantas Kvedaras | | Feed, 2010 | Rape | 6yrs | |
| 2011 | Anastassios Papas (43) | Sexual | Thames Valley 2010 | S.57 (conspiracy) and s.58 of the SOA, controlling prostitution for gain, converting criminal property | 7yrs & 4yrs on licence/ sign sex offenders register for life | Oxford CC Judge Gordon Risius Neil Moore |
| | Graham Cochrane (49) | | | S.57 (conspiracy) and 58 of the SOA | 5yrs / sign sex offenders register for life | |
| 2011 | Mehmed Mahmudov (33) | Sexual | MPS 2010 | (PG) Conspiracy - S.57 of the SOA, controlling prostitution for gain | 6yrs | Croydon CC Judge Pratt James Dawson |
| 2011 | Sergey Konart (41) | Sexual | MPS 2011 | (PG) Conspiracy - S.57 of the SOA, controlling prostitution for gain | 10yrs/£150,000 | Southwark CC Judge John Price Hanna Llewellyn-Waters |
| | Ekaterina Kolesnikova (26) | | | (PG) Conspiracy - S..57 of the SOA, controlling prostitution for gain | 2yrs/ £30 | |
| 2012 | Ilyas Ashar (83) | Labour/ Child | Greater Manchester 2011 | S.4 of the AI(TC)A | Currently being re-tried on certain counts Minshull Street CC Peter Cadwallader | |
| | Tallat Ashar (66) | | | S.4 of the AI(TC)A | | |
| 2012 | Sandra Malina (22) | Sexual | MPS 2011 | Controlling prostitution for gain | 2yrs | Snaresbrook CC |
| | Ainars Zvirgzds (44) | | | (PG) S.57 of the SOA, controlling prostitution for gain, possession of a firearm | 13.5yrs | |
| 2011 | Aurel Zlatea (44) | Labour | MPS 2011 | S.4 of the AI(TC)A, child cruelty, ABH | 9.5yrs | Croydon CC Judge Shani Barnes Riel Karmy-Jones |
| | Alexandra Oaie (43) | | | S.4 of the AI(TC)A, child cruelty | 9yrs | |
| | Marian Neamu (23) | | | Rape, S.4 of the AI(TC)A, sexual assault, false imprisonment | 13yrs | |
| | Florin Zlatea (23) | | | Rape, sexual assault, false imprisonment, ABH | 9yrs | |
| 2012 | Ionut Daniel Nicolae (24) | Sexual | West Midlands 2011 | Conspiracy - S.57of the SOA | 10.5yrs | Birmingham CC Judge Nicolas Webb Simon Davis |
| | Vasillica Cosmina Tirei (26) | | | Conspiracy – S.57of the SOA | 9yrs | |
| 2012 | Kulvinder Singh Gill | Sexual | Amber Valley/SOCA 2010 | (PG) Sexual assault | 1yr | Derby CC Judge Ebrahim Mooncey Andrew Peet |
| | Tajinder Singh | | | (PG) Conspiracy - S.57 of the SOA | 2yrs | |
| | Joao Goncalo Dias | | | (PG) Conspiracy - S.57 of the SOA | 2yrs | |
| 2012 | Alexsander Sochack | Sexual | Suffolk Oakland 2010 | Conspiracy to manage or assist in the management of brothels | 3yrs | Ipswich Crown Court Judge David Goodin Charles Myatt |
| | Aleksandra Bryll | | | Conspiracy to manage or assist in the management of brothels | 1yr | |
| | Przemyslaw Wegrzynowsk | | | (PG) Conspiracy to manage or assist in the management of brothels | 8mths suspended for 12 mths/ barred from entering | |

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|------|---------------------------|--------------|------------------------------|---|---|---|
| | | | | | Ipswich, Colchester or Norwich | |
| | Jagoda Kukielka | | | Conspiracy to manage or assist in the management of brothels | 100 hours unpaid work as part of 12mth community orders | |
| | Magdalena Pacula | | | Conspiracy to manage or assist in the management of brothels | 100 hours unpaid work as part of 12mth community orders | |
| 2012 | James John Connors (34) | Labour | Bedfordshire Netwing 2011 | S.71 of the CJA, ABH | 11yrs | Luton CC Judge Michael Kay Frances Oldham QC |
| | Josie Connors (31) | | | S.71 of the CJA | 4yrs | |
| | Tommy Connors Snr (52) | | | Conspiracy - S.71 of the CJA, ABH | Re-trial in April 2013 on certain counts | |
| | Patrick Connors (20) | | | Conspiracy - S.71 of the CJA, ABH | | |
| 2012 | Osezua Elvis Osolase (42) | Sexual/child | Kent 2011 | Rape, conspiracy to traffick – ss.57 & 59 of the SOA, sexual activity with a child | 20yrs/ Sign sex offences register | Canterbury CC Judge Adele Williams Sarah Ellis |
| 2012 | Mohammed Amin | Sexual | Greater Manchester Span 2011 | Conspiracy to engage in sexual activity with a child, sexual assault | 5yrs | Manchester CC Judge Gerald Clifton Rachel Smith |
| | Kabeer Hassan (25) | | | Rape, conspiracy to engage in sexual activity with a child | 9yrs | |
| | Hamid Safi (22) | | | S.58 of the SOA, conspiracy to engage in sexual activity with a child | 4yrs | |
| | Abdul Qayyum (44) | | | Conspiracy to engage in sexual activity with a child | 5yrs | |
| | Mohammed Sajid | | | Rape, s.58 of the SOA, conspiracy to engage in sexual activity with a child, engage in sexual activity with a child | 12yrs | |
| | Adil Khan | | | S.58 of the SOA, conspiracy to engage in sexual activity with a child | 8yrs | |
| | Abdul Rauf | | | S.58 of the SOA, conspiracy to engage in sexual activity with a child | 6yrs | |
| | Abdul Aziz | | | S.58 of the SOA, conspiracy to engage in sexual activity with a child | 9yrs | |
| | Shabir Ahmed (59) | | | Rape, aiding and abetting rape, s.58 of the SOA, conspiracy to engage in sexual activity with a child, sexual assault | 19yrs | |

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|------|----------------------|------------------|-----------------------------------|--|---------------------------------------|---|
| 2012 | Ahdel Ali (24) | Sexual/ Child | West Mercia Chalice 2010 | Rape, meeting a child following sexual grooming, controlling child prostitution, inciting sexual activity with a child, causing or inciting child prostitution | 18yrs | Worcester CC Judge Patrick Thomas Deborah Samantha Gould |
| | Mubarek Ali (29) | | | S.58 of the SOA, controlling child prostitution, causing or inciting child prostitution | 14yrs | |
| 2012 | William Connors | Labour | Gloucestershire Tundra 2011 | Conspiracy - S.71 of the CJA (forced labour) | 6.5yrs | Bristol CC Judge Michael Longman Christopher John Quinlan |
| | Brida (Mary) Connors | | | Conspiracy - S.71 of the CJA (forced labour) | 2yrs 3mths | |
| | John Connors | | | Conspiracy - S.71 of the CJA (forced labour) | 4yrs | |
| | James Connors | | | Conspiracy - S.71 of the CJA (forced labour) | 3yrs | |
| | Miles Connors | | | Conspiracy - S.71 of the CJA (forced labour) | 3yrs | |
| 2013 | William Connors | Labour | Hampshire 2011 | (PG) Conspiracy - S.71 of the CJA (forced labour) | 2.5yrs | Southampton CC Judge Peter Henry Charles Thomas |
| | John Connors | | | (PG) Conspiracy S.71 of the CJA (forced labour) | 3yrs 4mths | |
| 2013 | Dawid Siwak | Labour | Hampshire 2011 | S.4 of the AI(TC)A, s.71 of the CJA, breach of a conditional discharge | 6yrs 3mths | Portsmouth CC Judge Roger Hetherington Samuel Shaw |
| 2013 | Odosa Usiobaifo (35) | Sexual/ Child | Sussex / UKBA Hudson 2012 | Conspiracy - S.57 of the SOA, conspiracy to facilitate illegal immigration (PG) | 14yrs | Isleworth Crown Court Judge Anna Guggenheim |
| 2013 | Suran Uddin | Sexual/ Child | Suffolk and Norfolk | Rape, conspiracy - s.58 of the SOA, supplying a class B drug | 15yrs | Norwich CC Judge Nicholas Coleman Riel Karmy-Jones |
| | Mohammed Sheikh | | | Conspiracy - S.58 of the SOA, causing a child to engage in sexual activity, supplying a class B drug | 8yrs | |
| | Hamza Ali | | | Conspiracy - S.58 of the SOA, sexual assault, supplying a class B drug | 5yrs | |
| 2013 | Shamina Yousuf | Labour | MPS | ABH | 40hrs of community service | Croydon Crown Court Judge Shani Barnes Caroline Haughey |
| | Enkarta Balapovi | | | Rape | 11yrs | |
| | Shashi Obhrai | | | ABH, threats to kill | 3yrs & 2mths suspended sentence | |
| 2013 | Akhtar Dogar | Sexual/ Child | Thames Valley Bullfinch | Rape, child prostitution, s.58 of the SOA | Awaiting sentencing | Old Bailey Judge Peter Rook Noel Lucas QC |
| | Anjum Dogar | | | Rape, child prostitution, s.58 of the SOA | | |
| | Mohammed Karrar | | | Rape of a child under 13, procuring an abortion, conspiracy to rape, child prostitution, s.58 of the SOA | | |
| | Bassam Karrar | | | Rape of a child under 13, conspiracy to rape a girl under 13, child | | |

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|--|---------------|--|--|--|--|--|
| | | | | prostitution, s.58 of the SOA | | |
| | Kamar Jamil | | | Rape, conspiracy to rape, child prostitution | | |
| | Assad Hussain | | | Sexual activity with a child | | |
| | Zeeshan Ahmed | | | Sexual activity with a child | | |

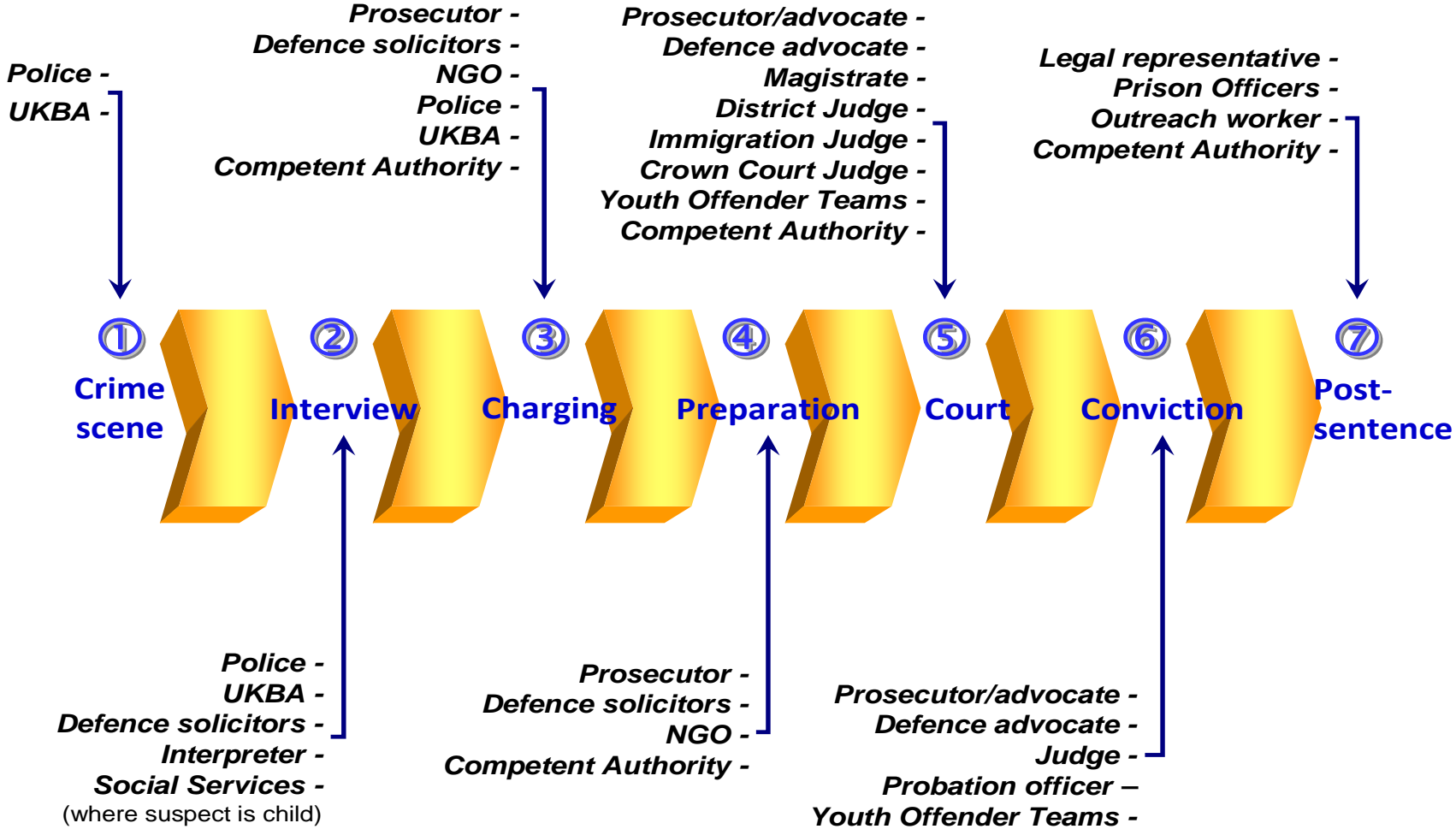
Northern Ireland

| | | | | | | |
|------|---------------|--------|--------------------|--|--------------------------------------|---|
| 2011 | Matyas Pis | Sexual | PSNI Sinciput 2010 | S.57 of the SOA, controlling prostitution for gain, brothel keeping | 18mths followed by 18mths on licence | Belfast Crown Court Recorder Tom Burgess Conor Maguire |
| 2012 | Rong Chen | Sexual | PSNI Sleek 2009 | (PG) Trafficking within, controlling prostitution for gain, entering into an arrangement to control criminal property | 7yrs | Belfast Crown Court Justice Stephens |
| | Simon Dempsey | | | (PG) Aiding and abetting the control of prostitution for gain, entering into an arrangement to control criminal property | 9mths | |
| | Jason Hinton | | | (PG) Aiding and abetting the control of prostitution for gain | 220hrs of community service | |

Scotland

| | | | | | | |
|------|-----------------|---------------|-----------------------------|---|---------------------------|---|
| 2010 | David Leslie | Labour | UKHTC/GLA/UKBA | Withholding wages and racial discrimination | £26,000 paid to claimants | Dundee Employment Tribunal |
| 2011 | Stephen Craig | Sexual | Strathclyde and PSNI Factor | (PG) S.22 of the Criminal Justice (Scotland) Act 2003 | 3yrs & 8mths/£45,000 | Glasgow Sheriff Court |
| | Sarah Beukan | | | (PG) S.22 of the Criminal Justice (Scotland) Act 2003 | 18mths | Keith O'Mahoney |
| 2013 | Helena Kulova | Sham marriage | Tayside | S.4 of the AI(TC)A, theft | 3yrs | Dundee Sheriff Court Sheriff Elizabeth Munro Andrew McIntyre |
| | Renata Kulova | | | S.4 of the AI(TC)A, theft | 3yrs | |
| | Ivan Balog | | | S.4 of the AI(TC)A, theft | 3yrs | |
| 2013 | Petr Kupka | Benefit fraud | | Identity Cards Act, fraud | 4yrs | Glasgow Sheriff Court Sheriff Joseph Platt |
| | Michal Rondos | | | Identity Cards Act, fraud | 3yrs & 3mths | |
| | Vladimir Fojtik | | | Identity Cards Act, fraud | 2yrs & 3mths | |

Annex III: The CPS's Seven Stages of Intervention for a Victim of Trafficking who may be Criminalised model

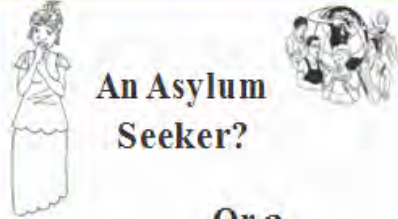


Annex IV: Criminal Case Review Commission leaflet

CCRC
Criminal • Cases • Review • Commission


ARE YOU

↓



An Asylum Seeker?


Or a



A Refugee?

OR ARE YOU

↓




A Victim of Human Trafficking?


CCRC
Criminal • Cases • Review • Commission

The CCRC can look into a case when someone thinks they have been wrongly convicted. If the CCRC thinks a conviction is unsafe we have the power to send the case to an appeal court.


Apply to the CCRC if you would like us to look at your case.



It costs **nothing** to apply to the CCRC




Your sentence **cannot** be increased if you apply




You do **not** need a solicitor to apply to us

Are you an asylum seeker or refugee?




↓

Were you convicted of having no passport or a false passport or entering the UK using deception?




↓

Did you plead guilty or lose your appeal?



↓

What next?



↓

THE CCRC CAN LOOK AGAIN

CCRC
Criminal • Cases • Review • Commission

You may have a defence

If you are an asylum seeker or refugee and have been convicted of one of these offences, you may have a defence:



- Having or using a false passport or identification documents.
- Not having a passport or travel document.
- Lying to get on a plane using deception.
- Using deception to enter the UK, for example, with a false passport or visa.



The CCRC can look at your case again



OR ARE YOU

Are you a victim of human trafficking?



Were you convicted of an offence?



Did someone make you commit the offence? Or did you feel forced to commit the offence?



What next?



THE CCRC CAN LOOK AGAIN

CCRC

Criminal • Cases • Review • Commission

Contacting us

You can ask for an application form or find out more about us by writing to us at:



CCRC
5 St Philip's Place
Birmingham
B3 2PW



Or by calling us on
0121 233 1473



Or e-mailing:
info@ccrc.gov.uk

Information about the CCRC is available in other languages



All pictures are from the CHANGE Picture Bank www.changepeople.co.uk

The Anti Trafficking Monitoring Group

The Anti-Trafficking Monitoring Group (ATMG) was established in May 2009 and works to promote a victim-centred human-rights based approach to protect the well-being and best interests of trafficked persons. It was created to fulfil the role of a National Rapporteur set out in Article 29.4 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The ATMG undertakes analytical and evaluative monitoring of the implementation of the Convention, with a view to strengthening the overall effectiveness of UK anti-trafficking policy.

This report, the third in the ATMG series, examines the UK's criminal justice system and its response to trafficking in accordance with relevant Convention obligations.

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The views expressed herein are those of the ATMG and in no way reflect the opinion of the funders.

The ATMG comprises:

Afruca
Amnesty International (Northern Ireland and Scotland)
Anti-Slavery International
Black Association of Women Step Out (BAWSO)
ECPAT UK
Helen Bamber Foundation
Kalayaan
POPPY Project (of Eaves Housing)
Trafficking Awareness Raising Alliance (TARA of Glasgow Community & Safety Services)

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