



# Public consultation on the CPS Public Policy Statement on Prosecuting cases of Human Trafficking

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[www.cps.gov.uk/consultations/ht\\_index.html](http://www.cps.gov.uk/consultations/ht_index.html)

## What is this consultation about?

We have drafted a Public Policy Statement which tells you how we handle cases involving victims of Human Trafficking crimes. We want to know what you think about it.

## What is Human Trafficking?

Human Trafficking is a very serious crime.

Human Trafficking involves:

- Recruiting vulnerable children and adults
- Moving them to another place, often another country
- Using threats, force or deception to make them do something against their will
- Exploiting them to make money or provide services for their traffickers

Human Trafficking is a form of modern day slavery. Victims can be forced into:

- Prostitution and sexual services
- Forced labour
- Domestic work
- Organ removal
- Slavery
- Enabling others to acquire benefit
- Criminal activity

Human Traffickers can move people from country to country. They can also move people within the United Kingdom. Their victims can be from other countries or from the United Kingdom.

They cause terrible harm to the people they abuse which can also have devastating effects on their families and to society as a whole.

## **What is the Public Policy Statement on Prosecuting cases of Human Trafficking consultation about?**

Public Policy Statements set out to the public how we do things. This Public Policy Statement explains what prosecutors will do when a case of human trafficking is referred to them. It explains our role and what we can do to help victims and witnesses who are supporting criminal proceedings. It also explains other actions we can take to disrupt human trafficking.

We want to make sure that our new Public Policy Statement is clear, fair and right.

To help us do this we would like you to read the Public Policy Statement and answer some questions.

We would appreciate your comments and views in developing the final version of the statement.

## What are the questions?

1. Does the introduction explain the reason for the document clearly and show how much importance the CPS places on tackling human trafficking? If not, please suggest how we could make this clearer.
2. Is the description of trafficking and smuggling legislation explained clearly?
3. Is the role of the CPS and the explanation of how we make decisions to prosecute clear? If not, please suggest ways in which we could make these two sections clearer.
4. Have we provided enough explanation of how we build prosecutions in human trafficking cases? Is there enough explanation of the victim's role and what can be done to support victims and witnesses?
5. Do we show clearly how we will deal with children as victims and witnesses and our policy where a child may face charges for offences they are forced to commit whilst in a coerced situation? If not, please state ways in which we could do so.
6. Is the role of prosecutors in their acceptance of pleas and sentencing clear? Do we need to provide more information to explain other means of disrupting traffickers?
7. Any other comments about the document?

## How to respond to the consultation

A response form is available at the end of this document. A Word version can be downloaded from the consultation homepage at [www.cps.gov.uk/consultations/ht\\_index.html](http://www.cps.gov.uk/consultations/ht_index.html).

Responding by email:

- Read the Public Policy Statement on prosecuting cases of Human Trafficking
- Download the response form
- Answer the questions on the response form by typing in the spaces

- Please tell us your name, organisation (if applicable) and postal address
- Save the completed form on your computer
- Send an email to us ([consultations@cps.gsi.gov.uk](mailto:consultations@cps.gsi.gov.uk)) and attach your response form
- Your response must get to us by 31 October 2010

Responding by post:

- Read the Public Policy Statement on Prosecuting cases of Human Trafficking
- Print the response form and fill it in
- Please tell us your name, organisation (if applicable), postal address and email address (if you have one).
- Send the completed form to us at the address below:

Human Trafficking Consultation  
Strategy and Policy Directorate  
Crown Prosecution Service  
Rose Court  
2 Southwark Bridge  
London  
SE1 9HS

- Your response must get to us by 31 October 2010

## **Confidentiality of responses**

The information you send us may be passed to colleagues within the CPS, the Government or related agencies.

Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information legislation including the Freedom of Information Act 2000 (FOIA).

If you want the information that you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could briefly explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the CPS.

Please ensure your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The CPS will process your personal data in accordance with the Data Protection Act 1998 - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## What happens next?

Thank you for telling us what you think. We will read all responses and consider them when writing the final statement.

We will publish the results of this consultation on our website at [www.cps.gov.uk/consultations/](http://www.cps.gov.uk/consultations/).

## Government Consultation criteria

The Department for Business Innovation and Skills (DBIS) sets seven consultation criteria for running effective public consultations. These key consultation criteria are:

### **Criterion 1: When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

### **Criterion 2: Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

### **Criterion 3: Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

**Criterion 4: Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at those people the exercise is intended to reach.

**Criterion 5: The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

**Criterion 6: Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

**Criterion 7: Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

# **CPS Public Policy Statement on Prosecuting cases of Human Trafficking**

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## Introduction

Trafficking in human beings is a serious crime which demeans the value of human life. It is a form of modern day slavery and involves the recruitment and movement of the most vulnerable adults and children to exploit them in degrading situations for financial rewards for their traffickers. Trafficking often takes place across international borders; but it can also happen within the United Kingdom. Victims might be foreign nationals, but can also include British Citizens. It has a devastating effect not only on the individuals trafficked but also their families; it causes harm to the victims and to society as a whole.

The most effective means of combating trafficking is disruption, which includes successful prosecution. The Crown Prosecution Service (CPS) is committed to reducing the harm caused by trafficking and exploitation through prosecuting those responsible. This policy statement explains the way in which we, the CPS, deal with cases of human trafficking and the wide range of other crimes associated with it. It explains what the CPS does, how we prosecute cases of human trafficking and what measures we can rely on to protect and support trafficked victims. The document is designed for those who support trafficked victims, whether professionally or personally, although it may also be of interest to victims and witnesses and the general public.

In identifying ways to improve the quality of our prosecutions and the support available for victims of trafficking, we make links with other crimes committed primarily against women, often within a context of power and control. Human trafficking is part of the overarching CPS Violence against Women strategy, which also includes rape and sexual abuse. In making these links prosecutors can make connections and transfer good practice between crimes of violence against women - in terms of both defendants and victims.

This document provides a clear statement about the role of the CPS and how we make decisions in prosecutions, from deciding whether to charge someone with a criminal offence to what that charge or those charges should be. It will explain how we work with the police and other investigators in case building and our role in supporting and protecting victims and witnesses through the process.

## Victims and Witnesses

We recognise the central role of victims and witnesses in achieving successful prosecutions. We know that many victims and witnesses take significant risks in giving evidence against their traffickers and exploiters; they often fear the consequences of giving evidence and may be reluctant to support criminal proceedings. They may also worry that they may not be believed. Victims and witnesses may also be apprehensive or frightened about coming to court to give their evidence. Whilst we know it will be difficult, we will work with a range of



other agencies such as POPPY Project, the police and the courts to provide them with appropriate protection and support to ensure their safety and to help them to give their best evidence. (A list of agencies that support trafficked victims is available at **Annex B: List of agency contact details**.) The CPS will consider the range of measures available to support and protect trafficked victims giving evidence to encourage them to give their best evidence and make appropriate applications to the court.

We also recognise that children and young people will need extra support. Child victims of trafficking are likely to be in need of welfare services and, in many cases, protection and safeguarding. Although the main responsibility for children's welfare and safety will usually lie with other agencies such as social, health and education services, we will positively engage with other authorities and agencies to support safeguarding children and deciding the best way to support and protect them.

## Working with others

The CPS is one of a number of agencies that respond to the challenges of dealing with human trafficking and we support the need for a multi-agency response. We work closely with the police, other colleagues in the criminal justice system, community groups and the voluntary sector in identifying ways to increase disruption, prevention, investigation and prosecution as well as improving victim and witness care and protection. We know that non-governmental organisations will often have greater experience of victims and their differing needs and that a criminal justice route is not the only way of responding to trafficking; criminal (and civil) law may need to be used in conjunction with support services for victims.

## International role

Because of the global nature of trafficking, with victims often being transported across a number of different countries to their destination, the CPS has a significant role in supporting the UK Government in its international efforts to help law enforcement agencies and prosecutors in other developing countries to investigate and prosecute trafficking themselves, as well as raising awareness. By building capacity in these countries, we aim to help them to prosecute their offenders and offences better, thereby reducing the potential harm through crime there and in the UK. In responding to this global crime, the CPS also participates in Joint Investigation Teams (JITs) which are multi agency teams involving law enforcement officers and prosecutors from more than one country, to tackle the chain of criminals across different countries responsible for recruiting, moving and exploiting vulnerable victims.

This policy statement is supported by more detailed guidance for CPS prosecutors so that they too have a clear understanding of the policy and how they can best respond to this type of crime. Some words and phrases used in this document may not be familiar to everybody. We have therefore set out a **Glossary of Terms** at the end of this document in which we have defined some of the words and phrases used.

## What is human trafficking?

Human trafficking is a crime against humanity which affects every country in the world. Trafficking is the acquisition of people through the use of force, coercion or other means with the aim of exploiting them. Men, women and children can fall into the hands of traffickers either in their own countries or abroad. Trafficking occurs both across borders and within a country.

Human trafficking has three constituent elements. They are:

- **The Act** - recruitment; transport; transfer; harbouring; and receipt of persons.
- **The Means** - threat or use of force; coercion; abduction; fraud; deception; abuse of power or vulnerability; and giving payments or benefits.
- **The Purpose** - exploitation, including: prostitution of others; sexual exploitation; forced labour; slavery or similar practices; removal of organs; and other types of exploitation.

Human trafficking is often considered to be organised crime that works on a large commercial scale. But trafficking covers a range of criminal activity, and it can also be committed by a single person who may be known or related to the victim; this makes it easier for the trafficker to recruit people as there may already be a relationship of trust.

The means of trafficking may also be more subtle than those described above. For example, victims may have an emotional attachment to their trafficker and may be psychologically bullied or coerced into a situation of exploitation. Or they may be totally dependent on those who are victimising them.

The different types of exploitation this covers is fairly wide ranging and often includes the following types of conduct:

- **Sexual** - frequently through prostitution where victims are placed into off-street brothels, forced to see many clients, and receive either little or no money. Victims regularly suffer sexual and physical violence and abuse. Whilst it predominantly affects women, young girls, boys and men can also be sexually exploited. It is not confined to off-street brothels or flats and some victims are forced to work on the streets.
- **Forced labour** - where victims are forced to work very long hours and hand over all of their wages to their traffickers or controllers. Violence and threats are used against victims or against their families if they fail to comply. Threats are sometimes made to expose the worker to the authorities, for example because of the worker's immigration status, or their passports are confiscated. Many victims are also in debt bondage.
- **Domestic Servitude** - victims who live and work in households where they are forced to work through threats of serious harm and physical and sexual assaults. There is often restriction of liberty and movement and victims cannot leave their accommodation. In essence it is a form of slavery and victims are required to live in conditions below human dignity.
- **Enabling others to acquire benefit** - this can include but is not restricted to money from state financial assistance such as child benefit or unemployment benefit, and is defined as any benefit derived by the trafficker such as profit, personal benefit or privilege. Victims are often deceived or coerced into helping their traffickers on account of their youth or disability.
- **Organ harvesting** - where victims are trafficked in order to sell their body parts and organs for transplant;
- **Children** - children are amongst the most vulnerable victims; sometimes they are sold into forced labour or domestic work through debt bondage by family members where they are vulnerable to sexual or physical abuse. Or children can become vulnerable to being used in criminal enterprises, working in cannabis farms or pick-pocketing (theft) gangs. Many are unaccompanied asylum-seeking children who are preyed upon by those who exploit them to enable others here to acquire benefits. British children can also be vulnerable to traffickers who exploit and abuse them through prostitution.

Trafficking of human beings should not be confused with 'smuggling' of human beings. The majority of people who enter the UK illegally have either done so by themselves or have arranged to be smuggled into the country. The next section explains some of the differences.

## What is smuggling?

Whilst victims who are trafficked have little choice in what happens to them, and it is generally against their will or under some sort of false pretence, people smuggling generally takes place with the consent of the person being smuggled. Common reasons for individuals seeking to be smuggled include employment and economic opportunity, or the escape from persecution or conflict. Once they have been moved across international borders, the relationship with those assisting in the smuggling ends upon arrival at their destination. Smuggling is a crime which involves the illegal entry into a country of which that person is not a national or resident either clandestinely or through deception, such as the use of fraudulent documents.

Factors which help distinguish between smuggling and trafficking are:

- **Consent** - smuggling is a voluntary act and there is normally little coercion/violence involved or required from those assisting in the smuggling.
- **Exploitation** - there is no exploitation by the smugglers of their victims once they reach their destination, effectively their relationship ends on arrival at destination; trafficking victims on the other hand are subjected to a cycle of exploitation.
- **Profits** for smuggling are derived primarily from transportation and facilitation of illegal entry in another country, whereas traffickers profit primarily from the exploitation of their victims.

However, in some cases the distinction between a smuggled and trafficked person will be blurred and both definitions could easily be applied. The victim may have started out being smuggled into the country, but during their journey or when they arrive at their destination it could develop into or become trafficking.

This can happen if someone has started their journey here being a willing participant, perhaps travelling here to work in a new job. However, either during their journey or when they arrive, they become vulnerable to traffickers and are exploited and harmed. They may be subjected to unsafe conditions in their journeys to their destinations, subjected to sexual or physical abuse or be forced to participate in other criminal activities during their journey. It is important to examine the end situation to determine whether someone has been smuggled or trafficked.

## The role of the CPS

The CPS is the principal public prosecution service for England and Wales, headed by the Director of Public Prosecutions (DPP). The DPP exercises his functions independently, subject to the superintendence of the Attorney General who is accountable to Parliament for the work of the prosecution service. The CPS was set up in 1986 to prosecute cases investigated by the police, and in some cases by immigration officers. Although we work closely with the police, we are independent of them.

CPS is not the only public prosecuting authority; there are a number of other prosecuting authorities throughout the UK. However, in disrupting the range of criminality associated with human trafficking, if police are unable to evidence criminal offences, then other means of tackling organised criminal activity can be employed. This policy document will explain some of the ways in which that can be achieved.

Whilst the CPS is one part of the criminal justice system, which includes others such as the police, the courts and defence lawyers, the global nature of human trafficking is such that we frequently work in collaboration with a wider number of domestic and international agencies. In responding to human trafficking our work also brings us into regular contact with non-governmental agencies.

All cases of human trafficking are serious, complex and require sensitive handling. They are most likely to be prosecuted by specialist prosecutors who have experience, expertise and training to deal with them.

The police and Serious Organised Crime Agency (SOCA) are the main agencies responsible for investigating cases of human trafficking and for gathering the evidence. However we also work closely with other agencies such as the UK Border Agency, the UK Human Trafficking Centre and the Vulnerable Persons Team in building strong cases. We have the responsibility for deciding in the most serious and complex cases, whether a suspect should be charged with a criminal offence, and, if so, what the charge(s) should be. The police do not refer every complaint of a criminal offence to us. However, when the police have a reasonable suspicion that a suspect(s) has committed a criminal offence associated with human trafficking, they must refer that case to a Crown Prosecutor, who will make the decision whether to charge.

Early consultation will take place between the prosecutor and the police or SOCA officer to ensure that all possible avenues of evidence are explored and that the correct charge(s) is identified. We intend wherever possible in these cases that the same prosecutor will be responsible for the case from beginning to end and will work closely with the investigator throughout. This degree of continuity is important to improve the quality of the prosecution.

Prosecutors will also work closely with financial investigators to pursue the financial assets of traffickers. Prosecutors will apply for orders to restrain and confiscate any assets and property traced by investigators.

Whilst we do take into account the views of victims regarding the impact that the offence has had, we do not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest when making decisions on cases.

## The Code for Crown Prosecutors

The **Code for Crown Prosecutors** (The Code) sets out how we make decisions about whether or not to prosecute. The Code is a public document. We review the cases referred to us by the police in line with the test set out in the Code. This is called the Full Code Test and has two stages:

### The evidential stage

We must be satisfied first of all that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. This means that a jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law is more likely than not to convict the defendant of the charge alleged.

The standard that we use to decide whether or not to prosecute is different from the one applied by the court before it may convict a defendant. For there to be a conviction, we have to prove the case so that the court is sure of the defendant's guilt.

If the case does not pass the evidential stage, it must not go ahead, no matter how important or serious it may be.

### The public interest stage

If the case does pass the evidential stage, we must decide if a prosecution is needed in the public interest. A prosecution will usually take place unless "the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour" (The Code, paragraph 4.16). If the evidential stage is passed, a prosecution will almost certainly be required in the public interest because of the nature and seriousness of these cases.

In accordance with the Code for Crown Prosecutors, each case will be reviewed taking into account a number of public interest factors which will often be present in cases of human trafficking. These include:

- the violence or threat of violence used on victims;
- that the offence was carried out by a group;
- that 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.

However, prosecutors will also have to consider public interest factors which may tend against a prosecution. These factors include the fact that a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account "any views expressed by the victim regarding the impact that the offence has had. In appropriate cases, for example where the victim is a child or an adult who lacks capacity as defined by the Mental Health Act 2005, prosecutors should take into account any views expressed by the victim's family" (The Code, paragraph 4.18). However, victims of exploitation often do not recognise that they are victims, or they may be under threat; this should be taken into account when hearing views expressed by a victim/victim's family.

We always think very carefully about the interests of the victim when we decide where the public interest lies. However we prosecute cases on behalf of the public at large and not just in the interests of any particular individual. Striking this balance can be difficult. The views and interests of the victim are important, but prosecutors must form an overall view of the public interest when deciding on prosecution.

Where prosecutors have a responsibility to explain their decision to the victim, for example, when they stop a case or substantially alter the charge in a case, they must comply with the Code of Practice for Victims of Crime and all relevant CPS Guidance. Please refer to the section **Keeping victims informed**.

## The Threshold Test

Crown Prosecutors will apply the Full Code Test wherever possible. However there will sometimes be cases where prosecutors apply the Threshold Test in order to make a charging decision. This might arise where there is insufficient evidence currently available to apply the evidential stage of the Full Code Test and the person arrested presents a substantial bail risk if released.

The full meaning of the Threshold Test and the circumstances in which it would be applied are fully set out in The Code at Section 5.

## Legislation

This section outlines the main criminal legislation relevant to human trafficking. More detailed information on the offences and their characteristics is contained in **Annex A: Legislation**.

### Sexual Offences Act 2003

Sections 57, 58 and 59 create three offences of trafficking for the purposes of sexual exploitation. The offences cover trafficking another person into the UK (section 57), trafficking within the UK (section 58) and trafficking out of the UK (section 59) with the intention of committing a relevant sexual offence on that person. A relevant sexual offence is any offence under Part 1 of the Sexual Offences Act 2003 which includes rape, prostitution and sexual abuse. These offences apply equally to women and men. It also includes all child sex offences which are covered in more detail in the section **Child Victims**.

### Asylum and Immigration (Treatment of Claimants) Act 2004

Section 4 creates offences of trafficking another person into, within and out of the UK for non-sexual exploitation. This includes domestic servitude or forced labour, human organ donation or forcing or enabling another person to acquire a benefit. This can mean a state benefit, for example a child benefit, or any advantage derived by the trafficker, which could include financial gain or profit.



## Immigration Act 1971

Section 25 creates an offence of assisting unlawful immigration to a member state (known as 'facilitation'). It is a breach of immigration law by a non-EU citizen (including a breach of another Member State's immigration law). We will use this offence when someone has been smuggled into the UK, or where we cannot prove the nature of the exploitation (for example in cases of pro-active investigations where a victim has not yet been subject to exploitation) or when someone may have been trafficked into the UK before 2004 when human trafficking laws came into force.

All of these offences cover criminal acts committed in the United Kingdom, regardless of the nationality of the defendant, as well as acts committed overseas. This means that if someone who resides in another country arranges for the recruitment or transport of a victim to the UK and knows that they will be exploited here, we can prosecute that person for offences of trafficking or smuggling.

The above offences can be tried either in a magistrates' court or at the Crown Court. However our guidance to prosecutors advises them that these offences are so serious that they are likely to lead to a significant sentence on conviction and as such they should be tried in the Crown Court. On conviction at the Crown Court a defendant can be sentenced to a maximum penalty of 14 years' imprisonment for each offence.

The offences are all 'lifestyle offences' for the purposes of the Proceeds of Crime Act 2002. This means that the court can assume that all the assets the defendant has acquired over the last 6 years are from crime, unless the defendant is able to prove otherwise. This enables us to confiscate the defendant's money.

Legislation also enables us to prosecute those who:

- attempt to commit a trafficking offence;
- participate as an accomplice in a trafficking offence; or
- organise or direct others to commit a trafficking offence

The relevant legislation is set out in **Annex A: Legislation**.

## Other legislation we can use

Prosecutors will be aware when dealing with a case of human trafficking that the victim may not just be a victim of trafficking. Often victims may have been subjected to other offences committed during the different stages of their journey and also during their exploitation. For example, a victim of sexual

exploitation may have also been raped and threatened by their trafficker over a period of time. Or a victim of forced labour may be falsely imprisoned, assaulted and threatened with violence or death. This is often done as a means of gaining and maintaining control over the victim.

Prosecutors will also consider a range of other offences with which to charge suspects. These offences may be in addition to charges of human trafficking if the evidence obtained by the police supports them and depending on the circumstances of the case. The choice of charges must reflect the full extent of the criminality and enable the court to sentence accordingly. A more detailed explanation of how we decide whether to charge and what offences to charge can be found in the section **The Code for Crown Prosecutors**.

Depending on the facts of the case, the prosecutor may consider the following other serious offences:

- Rape;
- Paying for the sexual services of a child;
- Causing, controlling or arranging child prostitution or pornography;
- False Imprisonment;
- Kidnapping;
- Abduction;
- Threats to kill;
- Theft;
- Assaults;
- Causing grievous bodily harm;
- Possession of false identity documents;
- Possession of stolen identity documents;
- Other offences involving Identity fraud;
- Other Fraud offences;
- Forgery;
- Deception;
- Money Laundering;
- Management of brothel premises;
- Paying for the sexual services of a prostitute subjected to force or exploitation;
- Holding a person in slavery or servitude;
- Causing or inciting prostitution for gain, etc;
- Witness intimidation.

## Financial powers

In addition to prosecuting the traffickers and others who make financial gains from the exploitation of their victims, we can also disrupt their activity by stripping them of their assets. The following are offences and powers which enable prosecutors and police to do this:

- Recovery of assets under the Proceeds of Crime Act 2002 to confiscate and remove assets from a defendant following conviction. For offences of human trafficking and smuggling the court can assume that all the assets the individual has acquired over the last 6 years are from crime and the defendant has to prove otherwise.
- Money laundering under the Proceeds of Crime Act which creates three criminal offences which do not have to involve money at all; their essence is the movement and use of 'criminal property' as opposed to money.
- Forfeiture which involves the seizure of items used to commit a crime. For human trafficking this includes the power to seize and forfeit land vehicles, ships and aircraft which may have been used to traffic victims.
- Seizure under the Proceeds of Crime Act, which is a civil power and allows the police to seize cash where the amount is over £1000 where they have reasonable cause to believe it has come from crime or is intended to be used in the furtherance of crime.
- Restraint and freezing of assets under the Proceeds of Crime Act at an early stage of the investigation.

An agreement between the police and the CPS clarifies the roles and responsibilities of police and prosecutors and sets out the working arrangements for these powers. However prosecutors will always provide early advice to the police concerning the investigation, preservation of assets, obtaining and enforcement of confiscation orders and confiscation matters generally and will make restraint and confiscation applications to the Crown Court on behalf of the police.

## Building a prosecution case

Prosecutors are case builders who work with investigators to build strong cases to put before a court. In cases of human trafficking, prosecutors frequently become involved prior to charging to advise on lines of enquiry and evidential requirements. This is particularly important as investigations usually extend to other jurisdictions, and often require evidence to be obtained from abroad.

### How we build a prosecution case

We will work closely with the police and other law enforcement agencies both domestically and in the countries where the victim has been trafficked from and across to make sure that all available evidence from all sources is gathered to prove the case. Prosecutors use a number of sources within the EU to help in expediting investigation and evidence gathering, and we have CPS liaison magistrates in a number of locations.

CPS prosecutors are sometimes required to travel to other countries to liaise with prosecutors who have an investigative responsibility to obtain evidence from abroad. Evidence gathering will be directed through that jurisdiction's prosecutor. In some cases, we will collaborate with them in order to prosecute traffickers in the most appropriate jurisdiction. That might mean that the traffickers are prosecuted in another country although the victims may have been exploited here. When that happens, we will work with investigators and prosecutors there to help evidence their case. The organisation Eurojust will assist in these cases in bringing all relevant agencies together.

When police to police enquiries to gather evidence from overseas cannot be used, a formal request for assistance from abroad must be made through a letter of request, which is a legal document. The prosecutor will prepare letters of request and issue these as early as possible in the investigation. Once evidence is received, it must be reviewed to ensure it is in a form which is admissible and reliable to support the case and present in a court of law in England and Wales.

The review process is a continuing process and prosecutors must take account of any change in circumstances. Whenever evidence or information is referred to the prosecutor, it is reviewed to make sure that it is right to proceed with a prosecution. Whilst the CPS and the police work closely together, the final responsibility for the decision whether to charge, what the charge should be or whether a case should go ahead, rests with the prosecutor.

## The role of victims and witnesses

As with all crime, the CPS recognises the central role of victims and witnesses in achieving successful prosecutions. The victim's account in court or statement to the police of what happened to them is evidence and is important to the case in proving each element of the offence of trafficking. We know that specialist support to the victim will be needed in cases of human trafficking. Prosecutors will consider how best to support them giving evidence in light of the often close and controlling relationship between the defendant and victim and the increased likelihood of victim intimidation. But we also recognise that sometimes trafficked victims may be reluctant to support criminal proceedings, they may be frightened or may not wish to come to court. If we suspect that the victim has been threatened or frightened into not giving evidence, we will ask the police to investigate further. The investigation may reveal new offences, such as harassment or witness intimidation. If necessary, we will ask the court to delay any hearing so that a thorough investigation may take place before we decide about the future of the case.

For victims and witnesses who do decide to give evidence, protection and specialist support is available from the police and other support organisations. There are also measures which we can apply for to protect victims and witnesses in giving evidence at court. These are discussed in more detail in the section **Victims and Witnesses**.

## What if the victim does not wish to give evidence?

If trafficked victims decide not to give evidence, we can still charge and prosecute offenders. Other corroborating or supporting evidence described below will assist in proving a case. This may be possible in the following situations:

- Where the victim has made a complaint and a statement to the police but does not wish to give evidence, we will consider whether it is still possible to continue without the victim's evidence. In very limited circumstances, the law allows us to use the victim's statement in court without calling the victim to give oral evidence, for example where the victim is in fear. This is called hearsay evidence but it is a matter for the court to decide. If there is sufficient other corroborative evidence, that is evidence which supports or confirms the victim's account, such as someone who is able to give direct evidence of what they saw or heard, or medical and scientific evidence which links the victim to the suspect, it may be possible to prosecute.

- Where the victim makes no complaint or report to the police. As long as there is evidence which proves all the elements of the offence without the need for the victim to make a complaint, we can still proceed to a prosecution for human trafficking. For example, where there is police surveillance evidence showing the suspect(s) transporting a victim, vehicle registration details which link the suspect to the car and premises where the victim may have been exploited, for example a brothel, together with recovery of exhibits such as false passports, mobile phone text messages or recovery of large sums of money.
- The prosecutor might consider other offences which can still be evidenced without the victim's testimony, such as smuggling, money laundering, forged or false document offences, causing or inciting prostitution for gain.

## Other evidence to prosecute

When investigating a human trafficking case, the police will always look for corroboration or supporting evidence such as medical or scientific evidence, CCTV evidence, or eyewitnesses to events. Other evidence the police will obtain to prove the offence will include the following:

- **Suspects.** Obtaining reference material from suspects is of primary importance. Where identification may be an issue photographs can be taken and where physical features, tattoos or jewellery items are described in victim or witness statements, these will be photographed to corroborate victim statements. Also forensic examination including fingerprints and DNA.
- **Forensic evidence** for scene to scene links. It may be possible to forensically link for example, vehicles to premises, suspects and victims through use of fingerprints, DNA or contact trace exhibits, even when suspects are not recorded. Imaging through conventional still photographs supported by video and other imaging techniques can confirm features identified in victim statements.
- **Premises.** Examination of scenes CCTV and use of fingerprint and DNA to link suspects and victims with premises. Searches of premises to recover evidence could include personal documents, passports, travel documents, family papers and documents relating to victim's and potential victim's home countries, mobile phones, financial documentation, vehicle documents, documents detailing associates.

- **Vehicles** which may have been used to transport and move victims around. DNA recovery may be used to identify individuals with access to vehicles and fingerprints.
- **Documents.** Conventional document recovery during searches can be very valuable in proving the commercial nature of human trafficking offences. IT and communications equipment offer further opportunities for evidence recovery. In cases of fraudulent document production it may be possible to identify processes and individuals. Downloading mobile phone data can also confirm contacts, dates and times.

## Victims and Witnesses

We have a duty to provide victims and witnesses with appropriate protection and support to ensure their safety and to improve their ability to give their best evidence. Whilst the experiences of victims of human trafficking will differ, it is important to recognise the serious impact of these crimes on the individual. Victims may have a range of health, sexual health, emotional and/or mental health issues. The welfare of the victim should always be paramount; it is for this reason that specialist support will be needed such as that provided by [POPPY Project](#).

A person may be considered a victim of trafficking regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.

Loss of freedom is a defining feature of trafficking. For example, trafficked victims are often not allowed to leave the premises where they are held or if they do, they are accompanied by a trafficker. Victims suffer frequent and severe abuse, both physical and psychological. Violence and physical harm are the hallmarks of trafficked women, in particular. But we are aware that victims can also suffer 'softer' forms of coercion; their freedom isn't quite so constrained, they are given some 'payment' from their earnings, they can be deceived into believing they are coming here for a better life.

Young people and children living in the UK can also be targets for traffickers and become victims of sexual exploitation. For some this abusive sexual relationship may begin and end with their exploiter 'boyfriend'; but more often it will lead to coercion into sexual activity with a wider group of abusers. Some may be moved from house to house, city to city - trafficked within the UK - and some may be 'pimped' by their abusers commercially. See the section **Child Victims**.

We know that victims often face barriers in coming forward and giving evidence. They don't always wish to, and they are sometimes unable to, co-operate with the authorities. Often they are in fear of the consequences of giving evidence against their traffickers, because of the threat of what might happen to them or to their families. They also may distrust the authorities - authorities in their home countries may be corrupt or even be responsible for trafficking them again.

Prosecutors should also recognise the diversity of victims; victims' experiences of trafficking are undoubtedly different and affected by their ethnicity, age, immigration status, religion and culture. The safety and needs of each victim must be assessed on an individual basis.

## **The National Referral Mechanism**

Improvements to the identification of victims and their subsequent referral through a National Referral Mechanism into appropriate support and protection have helped in their recovery from exploitative situations. The Council of Europe Convention on Action against Trafficking in Human Beings, which was implemented on 1 April 2009 to prevent and combat trafficking in human beings, creates mechanisms to identify and protect victims of trafficking and to safeguard their rights. It created provisions for support to victims through a forty-five day recovery and reflection period for all identified victims and temporary one-year renewable residence permits in circumstances where they assist the authorities or support criminal proceedings.

For victims of trafficking this means a first responder who encounters them can make a referral to either the UK Human Trafficking Centre or the UK Border Agency to access these provisions. The potential victim's case is considered and, if approved, the victim is given a 45 day reflection period during which time they are entitled to a range of support services, and will not be removed from the UK. Accommodation and support is provided through POPPY Project (for victims of sexual exploitation) and Migrant Helpline (for victims of labour exploitation). A number of individuals are also accommodated by charitable third sector support providers.

At the end of the reflection period, a conclusive decision will be made and if the victim does not have any leave to remain in the UK, they will be considered for a residence permit based on whether the victim is to support criminal proceedings, or whether their personal circumstances warrant a grant of leave to remain in the UK.

It should be noted that the referral form completed by a first responder recording their encounter with the victim may, in some circumstances, be disclosable to the defence as information on the form might contribute to the credibility of the victim or other prosecution witnesses.



More detailed information on these provisions can be found in the "[Council of Europe Convention on Action against Trafficking in Human Beings](#)".

## Code of Practice for Victims of Crime

Since April 2006, victims have had legal rights under the "[Code of Practice for Victims of Crime](#)" to receive certain levels of service from police forces, the CPS and from other criminal justice agencies. The Code of Practice applies to any person who has made an allegation, or had an allegation made on their behalf, of a crime that falls within the National Crime Recording Standards. It is immaterial that the perpetrator has not been arrested or charged. The Code represents a minimum level of service in England and Wales to be provided to victims by a wide range of organisations.

The CPS has the following obligations:

- To ensure that victims are informed of charging decisions. If the decision is taken that there is insufficient evidence to bring any proceedings, we will notify the victim of this fact within one working day.
- Where there is a decision to substantially alter or drop any charge, the CPS must notify the victim within one working day.
- In cases involving child abuse, or all sexual offences, the prosecutor must offer to meet the victims to explain a prosecution decision not to bring any proceedings in respect of criminal conduct. This also applies to cases where a decision is made to drop or substantially alter charges. See also the section **Keeping victims informed**.
- Where a victim is identified as potentially vulnerable or intimidated, the CPS must consider making an application to the court for a special measures direction. The outcome of that consideration must be recorded.
- Representatives of the CPS should introduce themselves to victims at court, answer any questions victims may have about court procedures and give an indication where possible of how long they will have to wait before giving evidence.
- In the event of delays to criminal proceedings, the CPS must, wherever possible, explain the reason for the delay and tell the victim how long the wait is likely to be.
- The CPS must pay expenses that the CPS has decided are due to the victim not later than ten working days after receipt of a claim form.
- The CPS must answer any questions the victim has about the sentence in their case.

- Must provide the Witness Care Units with copies of the List of Witnesses to attend Court as soon as these are finalised to notify victims if they are required to give evidence.
- Respond to requests for information from the Criminal Injuries Compensation Authority or the Criminal Injuries Compensation Appeals Panel no later than 60 working days after the day on which the CPS receive the request.

Further information on obligations to victims can be found in "[Code of Practice for Victims of Crime](#)".

## What we can do to help victims and witnesses at court

The early identification of a vulnerable or intimidated witness by the police and early discussion with the CPS prosecutor are essential to the conduct of the case. The police have the primary responsibility for alerting the prosecutor that the case involves a vulnerable or intimidated witness. Having identified that the witness is vulnerable or intimidated, the police can then video record the victim's evidence-in-chief for presentation at court. In all relevant cases, the witness's needs should be discussed at the meeting with the prosecutor to improve case progression and provide a level of reassurance for the victim or witness.

## Special Measures

Once victims have made the decision to support a prosecution, there are a number of measures the prosecutor can employ to assist.

- Prosecutors can make an application to the court for a range of measures to support and protect trafficked victims giving evidence against their perpetrators. This is particularly important as we realise that many victims take significant risks in giving evidence. These are called "Special Measures" and include:
  - screening the victim from the defendant;
  - giving evidence through CCTV;
  - clearing the public gallery;
  - in some instances, not revealing the victim's identity when giving evidence. This would only be appropriate in cases where the trafficker did not know the identity of the victim.

- We can apply for reporting restrictions under section 46 of the Youth Justice and Criminal Evidence Act 1999 to restrict media coverage of cases that reveal a witness's identity and may create safety issues.
- Where the victim wishes to remain in their home country, the prosecutor can make an application under section 32 of the Criminal Justice Act 1988 for them to give evidence via a video link from there. However evidence may not be given without leave of the court.
- It is our responsibility to protect victims from unwarranted or irrelevant attacks on their character and ask for the court's intervention where cross-examination is considered to be inappropriate or oppressive.
- Prosecutors can also in certain circumstance use powers under the Serious Organised Crime and Police Act 2005 to provide immunity from prosecution or sentence discounts for those who co-operate with the authorities.

However, whilst it is the prosecutor's role to make an application to the court for these measures, it is for the judge to decide whether to grant the application. In considering whether to do so, the judge will seek to balance the victim's rights against the rights of others such as the defendants. The Court will seek to act in the overall interests of justice.

- Trafficked victims whose first language is not English will always be afforded the use of an interpreter when giving their evidence. The CPS will only engage interpreters who are competent, qualified and security vetted.
- Victim Personal Statements allow a victim to explain how a crime has affected them personally. The police are responsible for taking this statement and the opportunity to make one must be offered at the first point of taking a statement whether in a written or video format. A victim may choose to make one at that time, or at any stage of the process.

## Keeping victims informed

We understand how important it is for victims to be kept informed about the progress of a case and about dates of court hearings or other important case developments. For victims of trafficking, that information will usually be passed to the senior investigating officer who will notify the victim's support provider.

Under the "[Code of Practice for Victims of Crime](#)" the Prosecutor must tell a victim if we decide that there is insufficient evidence to bring a prosecution (following a full evidential report from the police), or if we decide to drop a case, or substantially to alter the charges. In such circumstances, we will explain to a victim why we have made these decisions. Normally we will do this by writing a letter to the victim.

In a case of human trafficking, the prosecutor who made the decision to drop or substantially alter the charge will notify the victim within one working day and will also offer to meet the victim to explain personally the reasons for the decision. Where a prosecutor has made a decision not to charge during a face-to-face consultation with a police officer (that is, without a full, written evidential report), the police officer must notify the victim.

## Child victims

A child is any person under eighteen years of age. Child trafficking is the practice of transporting children into, within and out of the UK for the purposes of exploitation. The exploitation can be varied and include:

- labour exploitation (e.g. construction, restaurants, etc);
- domestic servitude;
- criminal activity (e.g. cannabis cultivation, petty street crime, illegal street trade, etc);
- sexual exploitation (brothels, closed community, for child prostitution or pornography, rape of a child, sexual grooming);
- benefit fraud;
- illegal adoption; and
- forced marriage.

## Identifying child trafficking and exploitation

Many children are trafficked and exploited through various types of control such as violence, the threat of violence, sexual abuse, alcohol and drug abuse, emotional abuse, manipulation through twisting cultural practices and imprisonment to suppress victims and ensure their compliance. Some are sold by family members or are in debt bondage, others may be coerced through more subtle means. They may come to the attention of the authorities as unaccompanied asylum seeking children identified at ports of entry or children identified by children's services or local authorities. Those who are trafficked here into criminal activity are often identified through the police or local authority.

Whilst the UK is primarily a destination state for human trafficking, children born or normally resident in the UK can be trafficked within the UK, that is moved within the UK, for sexual exploitation. Internal trafficking is characterised by the recruitment, grooming, or other forms of coercion of young teenage girls or boys leading to sexual exploitation by organised crime gangs in the UK or individuals. Investigations may arise in circumstances where a child has gone missing (often, but not limited to, children in local authority care). It often involves coercion by an individual who is older or more powerful than the victim and can begin with conduct such as swapping food for sexual favours; they may be sexually abused before being taken to other towns and cities where the sexual exploitation (prostitution) continues.

If a child is identified by police during operations, the Children's Services will be notified immediately so that a child protection plan is put into place and a strategy discussion co-ordinated. Children's Services are responsible for accommodating the child and will action a relevant investigation at the appropriate time.

## When to prosecute

The use of a child in a criminal enterprise is a form of child abuse. Children who may be forced into prostitution, or otherwise sexually exploited, or coerced into committing crimes or used by adults to commit offences will be treated by the CPS as a victim. More detailed guidance to prosecutors expands on these provisions. In cases where young victims are facing charges for offences committed whilst in a coerced situation, for example when they have been trafficked, the CPS will intervene. The prosecutor will give consideration to discontinuing a prosecution, on either evidential or public interest grounds, where information or evidence has been obtained to support that. Further information on this is in the section **Prosecuting suspects who might be trafficked victims**.

Prosecutors will think very carefully about the effect on a child before making the decision to prosecute, but if the crime is serious and the evidence is strong enough, the CPS will usually prosecute. The trafficking and exploitation of children will always be considered serious.

## Supporting child witnesses

Guidance has been issued to prosecutors on prosecuting cases involving children and young people as victims and witnesses of crime and, in appropriate circumstances, as defendants. This advises prosecutors that they must ensure that when they are dealing with cases involving children, the child is given appropriate support and there is consideration as to what is best for the

child if a criminal prosecution proceeds. Examples of this include expediting cases and dealing with them with fairness and sensitivity; where children are involved in prostitution, treating them as victims of abuse; consideration of the use of children as witnesses, witness care and of special measures to enable them to give evidence in the best way possible in terms of quality of their evidence and reducing trauma to them.

There can be considerable benefits to be gained where agencies and authorities establish close working relationships and share information. Prosecutors should therefore, where independence and objectivity are not compromised, positively engage with other authorities and agencies to safeguard children. A key forum for this is the Local Safeguarding Children Board.

## Special measures

The Home Office Guidance "[Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures](#)" (revised 2007) provides detailed recommended procedure for interviewing child witnesses. It considers planning interviews, decisions about whether the interview should be video recorded or a statement taken, preparing the witness for court and subsequent court appearances, pre-trial therapy and special measures.

The question of special measures for child victims and witnesses should be carefully considered by the prosecutor in discussion with the police as part of the charging advice. Child witnesses under the age of 17 will automatically be eligible for special measures under section 16 of the Youth Justice and Criminal Evidence Act 1999. Prosecutors should refer to Achieving Best Evidence for guidance on Special Measures. In addition to the **Special Measures** for adults, referred to in the section above, additional provisions are available for children, including publicity (under the Children and Young Persons Act 1933); hearings to be held in private and familiarisation visits.

At court, there is a presumption that the child should give evidence through video recorded evidence and a live link to keep the child out of the courtroom. If evidence is to be given by live link it is proposed that a supporter sit near the witness.

## Specialised child witness support

Support is available in some areas from specialised child witness support schemes and studies suggest that children benefit greatly from such support before, during and after trials where they exist. Special measures for the child should also be considered with whoever is supporting the child on a day to day basis, that is key workers in a specialist project or Children's Services.

Further guidance can be found in The Department for Children, Schools and Families and Home Office published guidance "[Safeguarding Children and Young People from Sexual Exploitation](#)" (June 2009). This guidance is aimed at local safeguarding children board (LSCB) partners, practitioners and other professionals working with children and young people and provides more information on the risk factors and models of sexual exploitation. It is intended to help them safeguard and promote the welfare of children and young people who are at risk of, or who are being, sexually exploited. It is supplementary to, and should be used in conjunction with, the Government's statutory guidance, "[Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#)".

## Age disputes

Young people may have no identifying information on them, their documents may be false or they may have been told to lie about their age to evade attention from the authorities. Some victims may claim to be adults when they are in fact under 18 years of age.

Where it is not clear whether the young person is a child (i.e. under 18 years of age) then in line with the United Nations Convention of the Rights of the Child, the benefit of the doubt should be given and the young person should be treated as a child. This is reinforced in the Council of Europe Convention on Action against Trafficking in Human Beings.

Where there is uncertainty about a suspected victim's age, Local Authority Children's Services will be responsible for assessing their age. The local authority in whose area the victim has been rescued will have responsibility for the care of the child as required by the Children Act 1989.

All local authorities are required to ensure that their assessments are full and comprehensive, that the process for assessing age is clear, transparent and fair. A Merton compliant assessment should be undertaken; this normally includes a face-to-face meeting; investigation the general background of the applicant; and ensuring adherence to standards of fairness. (The Merton judgment, handed down by Burnton J in the High Court on 14 July 2003, gives



"guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years".)

Where a person is brought before any court and it appears that they are a child or young person, it is the responsibility of the court to make due enquiry as to their age. The age presumed or declared by the court is then regarded to be their true age (under section 99 Children and Young Persons Act 1933 and section 150 Magistrates' Courts Act 1980).

The Court should consider any evidence of age that is available at the hearing of the case, which may include documentary evidence such as a passport, school records or a Police National Computer (PNC) printout verified by fingerprints as well as oral evidence from people who know the child.

## **Victims of forced labour and domestic servitude**

Whilst there is greater awareness of trafficking of women and young girls into sexual exploitation and children into criminal activity, there is less understanding and awareness of trafficking for forced labour and domestic servitude.

Trafficking for forced labour or domestic servitude covers a wide spectrum of exploitative situations ranging from those who have been locked up or severely restricted in their freedom of movement, and physically and sexually abused, to those who are deceived about the conditions of their contract, receive little or no financial rewards and reside and work in poor conditions. During times of recession where desperate men and women have few options to earn money, the black economy thrives in trading human beings or the exploitation of their labour.

Migrant workers - whether illegal migrants or legal migrants working illegally - are most at risk of exploitation and traffickers use regular migration routes and work visas, but then utilise debt bondage, the removal of documents and migrants' uncertainty about their rights and status to subject victims to forced labour. Many come expecting certain kinds of work but end up doing others.

Section 4 of the Asylum and Immigration Act 2004 creates specific offences of trafficking another person for the purposes of domestic servitude or forced labour (behaviour contravening Article 4 of the European Convention of Human Rights - slavery or forced labour). Under this legislation, CPS prosecutors have prosecuted for a range of exploitative situations including trafficking and exploitation of overseas domestic workers, agricultural workers, road labourers, restaurant workers and child begging.

One of the challenges we face in bringing prosecutions against those who traffic and exploit their employees lies in the fact that few people are willing to come



forward and complain to the police. Exploited migrant workers do not always consider themselves to be 'victims' of a crime. Although they are aware that they are paid less than the minimum wage and work long hours, they consider their situation here to be far superior to that offered in their country of origin. We want victims to know that our aim is to prosecute those who have committed these criminal offences against them. Any case that involves the exploitation of a migrant worker will be treated seriously by prosecutors and where the evidence supports a criminal offence, we will prosecute.

We recognise that there may be barriers to victims supporting criminal proceedings, particularly where there may be uncertainty about their immigration status. Where victims have been identified and referred through the National Referral Mechanism (see the section on **Victims and Witnesses**) they may be entitled to a residence permit if they assist in criminal proceedings or where their personal circumstances may warrant a grant of leave to remain. (For victims of trafficking for forced labour Migrant Helpline provides relevant support and advice. For victims of trafficking for domestic servitude Kalayaan is the NGO that provides support services.)

Prosecutions of exploitative employers may also be undertaken by other investigating and prosecuting agencies such as the Department for Works and Pensions (DWP), Health and Safety Executive (HSE), Her Majesty's Revenue and Customs (HMRC), Gangmaster Licensing Authority (GLA) and the Department for Business, Innovation and Skills (BIS). The CPS is working with the GLA and ACPO to improve the identification of victims and increase the numbers of investigations and prosecutions against exploitative employers. The GLA is in an advantageous position to identify potential gangmasters who might be committing offences of trafficking and exploiting victims of forced labour.

A further specific offence which criminalises servitude and forced labour came into force in April 2010. Section 71 of the Coroners and Justice Act 2009 created an offence of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour. This offence gives further and specific protection to those who may be the victims of forced labour or servitude. The offence will be available in circumstances where the person was not trafficked, for example they might be a British Citizen or came to the UK voluntarily, or the trafficking element cannot be proved to the criminal standard.

## Acceptance of pleas

Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.

Prosecutors should only accept the defendant's offer of a guilty plea (or pleas) if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. For example, the defendant may offer pleas to non-human trafficking offences such as rape or false imprisonment, which carry more severe punishment than human trafficking, and a plea to such offences in the appropriate case may be acceptable. Prosecutors must never accept a guilty plea just because it is convenient.

In considering whether to accept the pleas offered, prosecutors should ensure that the interests and views of the victim where possible, are taken into account when deciding whether it is in the public interest to accept the plea. However the final decision rests with the prosecutor.

It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different to the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence.

Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, prosecutors must also bear in mind the fact that ancillary orders can be made in relation to some offences but not others.

Prosecutors must comply with the "[Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise](#)" which sets out in greater detail the extent of prosecutors' duties and role in the acceptance of guilty pleas.

## **The Prosecutor's role in sentencing**

Sentencing is a decision for the court but prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence. The appropriate disposal of a criminal case after conviction is as much a part of the criminal justice process as the trial. This will include drawing the court's attention to the following factors:

- any aggravating and mitigating factors disclosed by the prosecution case;

- any Victim Personal Statement;
- where appropriate, evidence of the impact of the offending on a community;
- any statutory provisions, sentencing guidelines or guideline cases which may assist; and
- any statutory provisions relating to ancillary orders, for example confiscation, forfeiture, or deportation of the defendant(s).

## Ancillary or Additional Orders

Prosecutors will also consider and apply for other ancillary orders to protect victims of crime from future offending. Ancillary, or additional, orders can be used to address the harm caused by offenders and ensure that effective measures are put in place to prevent repeat victimisation. They can be used at different stages of the investigation or prosecution process or be applied for at the sentencing stage.

These are just a few examples of some of the Ancillary Orders that can be applied for which are relevant to human trafficking:

- Risk of Sexual Harm Order (RSHO); this is a civil preventative order used to protect children from the risks posed by adults engaged in sexual activity with a child;
- Cash seizure and Forfeiture order;
- Restraint Order which has the effect of freezing property anywhere in the world that may be liable to be sold to satisfy a Confiscation Order;
- Deportation where a foreign national is subject to immigration control if he or she has been convicted of an offence;
- Deprivation of property which enables the court to deprive an offender of property, used, or intended to be used to commit an offence, for example a vehicle;
- Restraining Order on acquittal;
- European Arrest Warrant which is a request made between judicial authorities of the EU for the extradition of persons to be prosecuted, sentenced, or to serve a sentence already imposed;
- Financial Reporting Orders.

The prosecuting advocate may also offer assistance to the court by making submissions as to the appropriate sentencing range in light of these factors and in accordance with guidelines issued by the Sentencing Council.

Before being sentenced, a defendant is entitled to make a plea in mitigation. We will challenge defence mitigation which is misleading, untrue or which unfairly attacks the victim's character.

Some trafficking cases have established guidelines for judges to follow in cases where there may be similar aggravating factors, although there are no guarantees that the court will follow them. When a court passes a sentence in a case which has similar aggravating or mitigating factors but the sentence appears to fall significantly lower than the guidelines advise, we can consider inviting the Attorney General to refer the sentence to the Court of Appeal as an unduly lenient sentence.

## Appealing unduly lenient sentences

If the judge passes a sentence which the prosecution considers to be unduly lenient because it does not properly reflect the seriousness of the offence, the CPS will ask the Attorney General to review the sentence. This must be done within 28 days of the sentencing decision. If the Attorney General agrees that the sentence is unduly lenient, the Attorney General can refer the case to the Court of Appeal. However, not all Human Trafficking offences are capable of being referred to the Court of Appeal where there is considered to be an unduly lenient sentence.

The application to the Court of Appeal must be made within 28 days of the sentence. The Court of Appeal decides whether or not the sentence is unduly lenient and, if it is, whether to increase the sentence.

## Compensation

There are a number of mechanisms by which a victim might seek compensation:

- through prosecutors requesting a compensation order upon conviction in appropriate cases under sections 130 -132 of the Powers of the Criminal Courts (Sentencing) Act 2000, which provides for compensation orders against defendants.
- through confiscation and compensation under section 13(2) of the Proceeds of Crime Act 2002. Here, the court must determine any application for confiscation before considering a compensation order, however, the court has a discretion under section 13(5) and (6) POCA 2002 to make both a compensation order and a confiscation order against the same person in the same proceedings if it believes that the defendant will have sufficient means to satisfy both orders in full.

Prosecutors can apply for these post conviction. However, alternative avenues to seek recourse are:

- through the victim suing the offender in the civil courts. Civil litigation enables the victim to hold a defendant personally accountable for his actions, though funding for legal representation to pursue a civil compensation claim may not always be available.
- through the Criminal Injuries Compensation Authority (CICA). This scheme provides, in certain circumstances, personal injury awards to victims of crime and fatal injury awards to immediate family members of a victim who has died as a result of a violent crime. To claim, the victim must have sustained physical or mental injuries as a result of a violent crime.

For further helpful practical guidance on mechanisms to claim compensation, please refer to "Rights and Recourse - A Guide to Legal Remedies for trafficked Persons in the UK", published by Eaves and Anti-Slavery.

## **Prosecuting suspects who might be trafficked victims**

We are aware that adults and young people may be arrested by the police and charged with criminal offences despite being a trafficked victim. This most frequently arises when they have been trafficked or smuggled here to commit criminal offences, for example organised pick-pocketing, ATM thefts or commercial cannabis cultivation, but can also arise in circumstances where they are escaping from their trafficking situation, the most obvious being immigration offences. Where young people are involved, where there is evidence that the child has been trafficked/exploited then that would generally provide a credible defence of duress.

Our legal guidance, "[Human Trafficking and Smuggling](#)" advises prosecutors that when reviewing a case in which a trafficked victim has committed a criminal offence whilst in a coerced situation, there is a strong public interest to stop the prosecution. Where there is clear evidence that the suspect has a credible defence of duress, the case should be discontinued on evidential grounds.

The guidance is clear in identifying relevant factors to consider. It provides clarity for prosecutors about the circumstances of the person's situation which might support a defence of duress in law, relevant factors when deciding where the public interest lies and clarity around the more subtle forms of coercion exercised by traffickers and exploiters. This guidance has been recognised by the Court of Appeal in the case of [R v O \[2008\] EWCA Crim 2835](#).

However, a prosecutor can only take these steps if they have information from the police or other sources that a suspect might be a victim of trafficking and this is only relevant where the criminality is as a direct consequence of the trafficking situation. Identification through the **National Referral Mechanism** should assist in the detection of these victims before they are arrested or charged and help to establish their victim status.

If the circumstances of the arrest or the evidence referred to the prosecutor suggest that someone may have been trafficked, we will ask the police to make relevant enquiries and obtain information about the circumstances of the arrest. However, there must be consideration of the extent to which the victim was compelled to undertake the unlawful activity.

The CPS cannot issue a blanket policy of not prosecuting those who are apprehended and arrested by the police who later turn out to be trafficked. The statutory obligations placed on the CPS by the Prosecution of Offences Act 1985 require Crown Prosecutors to review each case received from police investigators in accordance with The Code.

If a suspect has either been convicted of, or pleaded guilty, to a criminal offence, but has not yet been sentenced, and it comes to light that they had committed the offence as a direct consequence of their trafficking situation, the suspect's legal representative must make relevant representations to the court. If the CPS were made aware of any individual cases involving unrepresented defendants, the CPS would then consider a further review of those cases.

## Other means of disrupting trafficking

In cases where there are difficulties in obtaining sufficient evidence to bring a criminal prosecution against those who traffic or exploit victims, there are a number of other prosecuting agencies which can take action. These include:

- **Her Majesty's Revenue and Customs (HMRC) Criminal Taxes Unit (CTU)** who can effectively tax, through both civil and criminal means, the income, profits and gains from illegal activities associated with human trafficking.

Additionally HMRC work alongside the Department of Works and Pensions (DWP) criminal investigation team to prosecute in relevant cases, for example in nail bars which frequently exploit trafficked victims who work there.

The HMRC Hidden Economy teams and Cross Tax Evasion resources target adult entertainment venues which remain very much part of the hidden economy and exploit those who may be vulnerable in their business.

- **Gangmasters Licensing Authority (GLA)** was established in 2005 to regulate gangmasters through enforcing licensing standards and revoking licences in situations where employees are deemed to be at serious risk. The GLA is well placed to identify potential victims as part of their remit in enforcing licensing standards and revoking licences in situations where, for example, employees are being abused or exploited. The CPS is working closely with the GLA and ACPO in joint work to encourage further investigation and prosecution in these cases.
- **Health and Safety Executive (HSE)** can investigate and prosecute those who put their employees in danger of injury or loss of life through dangerous working conditions often associated with exploitative employers. Along with local authorities, it is responsible for investigating health and safety incidents, arising out of, or in connection with, work and taking enforcement action where appropriate.

## Complaints

Anyone who has a complaint about the way they have been treated by the CPS, or who feels that the criminal justice system has let them down and does not know who may be responsible, can write to the Chief Crown Prosecutor for the CPS Area where they live or where the investigation has occurred. The CPS has a complaints policy, and the procedure to follow can be found on the CPS website.

Breaches of the Code of Practice for Victims of Crime should be referred initially to the CPS to be dealt with under our complaints procedures. If the complainant remains dissatisfied, the complaint can be investigated and reported on by the Parliamentary Ombudsman.

## Conclusion

We are committed to playing our part in improving the way that cases of human trafficking are dealt with in the criminal justice system and to increasing the number of cases that we prosecute. We want victims and the public to have confidence in the way in which we review and progress cases.

We hope that this document will help those who support trafficked victims, (whether professionally or personally), victims themselves and the general public to understand the work of the CPS, how we make our decisions and the different stages of the prosecution process.

We will continue to work with our colleagues in the criminal justice system and the third sector at local, national and international levels to help us develop best practice.

We will review this policy statement regularly so that it reflects current law and thinking. We welcome any comments and observations that help us to do this.

Comments and suggestions can be made to the Strategy and Policy Directorate, Crown Prosecution Service.



# Annex A: Legislation

## Criminal Legislation

### **Sexual Offences Act 2003:**

- Section 57 Trafficking into the UK for sexual exploitation
- Section 58 Trafficking within the UK for sexual exploitation
- Section 59 Trafficking out of the UK for sexual exploitation
- Section 52 and 53 Causing or inciting and controlling prostitution for gain
- Section 1 Rape

### **Asylum and Immigration (Treatment of Claimants etc) Act 2004:**

- Section 4 Trafficking into, within and out of the UK for non sexual exploitation

### **Immigration Act 1971:**

- Section 25 facilitation of immigration law (smuggling)

### **Sexual Offences Act 1956:**

- Section 33A Managing or assisting in the management of a brothel
- Section 34 To let premises for use as a brothel
- Section 35 and 36 Allowing a tenant to use premises as a brothel or for the purposes of prostitution

### **Offences against the Person Act 1861:**

- Section 16 Threats to kill

### **Common law:**

- Kidnap
- False imprisonment

**Proceeds of Crime Act 2002:**

- Sections 327, 328 and 329 Money laundering

**Violent Crime Reduction Act 2006:**

- Section 54 Forfeiture to seize and forfeit land vehicles, ships and aircraft used for the trafficking of human beings

**Forgery and Counterfeiting Act 1981:**

- Section 1 Making or controlling a false instrument

**Identity Cards Act 2006:**

- Sections 25 or 26 Possession of false identity documents

**Policing and Crime Act 2009:**

- Section 14 paying for the sexual services of a prostitute subjected to force or exploitation

**Coroners and Justice Act 2009:**

- Section 71 holding another person in slavery or servitude or requiring them to perform forced or compulsory labour

**Criminal Law Act 1977:**

- Sections 1 and 1A Conspiracy to commit offences here and abroad

**International Instruments**

- The European Convention on Human Rights (ECHR) was incorporated into UK law by the Human Rights Act 1998
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

- Council of Europe Convention on Action Against Trafficking in Human Beings
- Palermo Convention on action against human trafficking
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child

## Annex B: List of agency contact details

**Please note:** The list of agencies and their contact details is not forming part of the consultation exercise. The agencies whose contact details will be provided in this annex are:

11 Million

AFRUCA

Amnesty International UK

Anti-Slavery International

Barnardo's

Cambridge Centre for Applied Research in Human Trafficking

CARE

Comic Relief

CROP

DePaul Trust

Eaves Housing for Women (POPPY Project)

ECPAT

English Collective of Prostitutes

Hibiscus

IOM London

Kalayaan

London School of Health & Tropical Medicine

Medaille Trust

Migrant Helpline

NACAB

National Federation of Women's Institutes

NSPCC

Red Cross

Refugee Council

Safe and Sound Derby

Salvation Army

Save the Children

Stop the Traffik

TARA

UK National Sexworkers Project

UNICEF

Unseen UK

## Glossary of Terms

**Please note:** The Glossary of Terms is not forming part of the consultation exercise.



**Consultation on the CPS Public Policy Statement on  
Prosecuting cases of Human Trafficking  
July 2010**

## **Response Form**

To understand what may happen to your personal details and the responses you give, please read the "confidentiality of responses" information which can be accessed via the consultation home page at: [www.cps.gov.uk/consultations/ht\\_index.html](http://www.cps.gov.uk/consultations/ht_index.html)

**If you are a member of the public or from an organisation (including a statutory body) please fill in the following details:**

Your name	
Any organisation you represent	
Postal address	
Contact telephone number	
E-mail address	

**If you are a member of CPS staff please fill in the following details:**

Your name	
Your Area, Group, HQ Division, or Directorate	
Contact telephone number	

**1. Does the introduction explain the reason for the document clearly and show how much importance the CPS places on tackling human trafficking? If not, please suggest how we could make this clearer.**



**2. Is the description of trafficking and smuggling legislation explained clearly?**

**3. Is the role of the CPS and the explanation of how we make decisions to prosecute clear? If not, please suggest ways in which we could make these two sections clearer.**

**4. Have we provided enough explanation of how we build prosecutions in human trafficking cases? Is there enough explanation of the victim's role and what can be done to support victims and witnesses?**

**5. Do we show clearly how we will deal with children as victims and witnesses and our policy where a child may face charges for offences they are forced to commit whilst in a coerced situation? If not, please state ways in which we could do so.**

**6. Is the role of prosecutors in their acceptance of pleas and sentencing clear? Do we need to provide more information to explain other means of disrupting traffickers?**

**7. Any other comments about the document?**

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**Where to send your completed form**

<b>Email them to</b>	<a href="mailto:consultations@cps.gsi.gov.uk"><u>consultations@cps.gsi.gov.uk</u></a>
<b>Post them to</b>	Human Trafficking Consultation Strategy and Policy Directorate Crown Prosecution Service Rose Court 2 Southwark Bridge London, SE1 9HS

**All replies must be received by  
Sunday 31 October 2010**