

Trafficking toolkit:  
Specific arrangements  
for the Crown  
Prosecution Service

CRIMINAL JUSTICE SYSTEM



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# SPECIFIC ARRANGEMENTS AND ADVICE FOR THE CROWN PROSECUTION SERVICE

## Responsibilities of court staff, legal practitioners and the CPS

### Role of the CPS in the National Referral Mechanism

Prosecutors may encounter potential victims of trafficking who are facing charges and prosecution for criminal offences which they have committed whilst in a trafficked situation. Examples of the types of offences generally committed by trafficked victims can be found in the guidance to prosecutors (outlined below).

Prosecutors may become aware that a suspect has been trafficked when first reviewing a case for advice on charging decision or at any stage during the review process. The prosecutor must be proactive in ensuring that proper enquiries are made to establish whether the suspect is a trafficked victim by requesting the investigating officer obtain further information about the circumstances in which the suspect was recovered. Where further information has been obtained but the prosecutor requires guidance to inform their decision, contact can be made with the UK Human Trafficking Centre (UKHTC) for advice on whether the suspect might be a credible victim. In these circumstances, evidence and the further information can be sent to the UKHTC with a request for assistance.

## Your role in the process

### Identifying victims

Prosecutors should follow CPS policy guidance on the prosecution of defendants charged with offences who might be trafficked victims. This can be found under Legal Guidance on Human Trafficking or by reference to the following link: [http://www.cps.gov.uk/legal/h\\_to\\_k/human\\_trafficking\\_and\\_smuggling/](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/)

Victims of human trafficking may commit the following immigration offences whilst they are being coerced by another:

- > Using a false instrument under section 3 of the Forgery and Counterfeiting Act 1981;
- > Possession of a forged passport or documents under section 5 of the Forgery and Counterfeiting Act 1981;
- > Possession of a false identity document under section 25 Identity Cards Act 2006;

- > Failure to have a travel document at a leave or asylum interview under section 2 Asylum and Immigration (Treatment of Claimants) Act 2004.

When reviewing such a case, it may come to the notice of the prosecutor that the suspect is a credible trafficked victim. For these purposes, credible means that the investigating officers have reason to believe that the person has been trafficked.

In these circumstances, prosecutors must consider whether the public interest is best served in continuing the prosecution in respect of the immigration offence.

The following factors are relevant when deciding where the public interest lies:

- > Is the person a credible trafficked victim;
- > The role that the suspect has in the immigration offence;
- > Was the immigration offence a direct consequence of their trafficked situation;
- > Were violence, threats or coercion used on the trafficked victim to procure the commission of the offence;
- > Was the victim vulnerable or put in considerable fear.

Where information has come to light from other sources that a suspect might be the victim of trafficking, for example from a non-government organisation (NGO), the prosecutor should:

- > Contact the police officer or immigration officer investigating the immigration offences;
- > Ask the investigating officer to make enquiries and obtain information in connection with the claim that the suspect has been trafficked (this should be done by contacting the UK Human Trafficking Centre (UKHTC));
- > Re-review the immigration case in light of any fresh information or evidence;
- > If new evidence obtained supports the claim that the suspect has been trafficked and committed the immigration offences whilst they were coerced, give consideration to discontinuing the prosecution. Where there is clear evidence that the defendant has a credible defence of duress, the case should be discontinued on evidential grounds.

Information may be in the form of medical reports (psychiatrist reports) claiming post traumatic stress as a result of their trafficking experience. The prosecutor should take the same steps outlined above. Any such information should be copied to the investigating officer for his/her observations.

Guidance has been issued to police and immigration officers on identification of victims and what might constitute a credible trafficked victim. Further reports or statements obtained from the investigating officer and/or an officer from the UKHTC should be carefully reviewed. However, all decisions in the case remain the responsibility of the prosecutor. The UKHTC will make relevant enquiries to establish whether they may be a potential trafficked victim. When information reveals the possibility that they may be trafficked the prosecutor and officer in charge of

the case will be contacted to ensure that policy guidance has been followed and the evidence re-reviewed in the light of new information

This guidance reflects the judgment in **R v O CA (Ref: 200802952 CI) All ER (D)** which requires that both Prosecutors and Defence lawyers are “to make proper enquiries” in criminal prosecutions involving individuals who may be victims of trafficking, in line with the findings of the Parliamentary Joint Committee on Human Rights report on Human Trafficking, that there must be co-ordinated law enforcement in protecting the rights of victims of trafficking.

### **Young defendants charged with offences who might be trafficked victims**

There may be instances where a youth faces criminal charges when he/she is a trafficked victim and the offences were committed when that person was in a coerced situation. The following offences might be committed by child trafficked victims:

- > Theft (in organised “pick pocketing” gangs), under section 1 Theft Act 1968;
- > Cultivation of cannabis plants, under section 6 Misuse of Drugs Act 1971.

Prosecutors should be alert to the possibility that in such circumstances, a young offender may actually be a victim of trafficking and have committed the offences under coercion.

Where there is clear evidence that the youth has a credible defence of duress, the case should be discontinued on evidential grounds. Where the information concerning coercion is less certain, further details should be sought from the police and youth offender teams, so that the public interest in continuing a prosecution can be considered carefully. Prosecutors should also be alert to the fact that an appropriate adult in interview could be the trafficker or a person allied to the trafficker.

Any youth who might be a trafficked victim should be afforded the protection of our child care legislation if there are concerns that they have been working under duress or if their well being has been threatened. In these circumstances, the youth may well then become a victim or witness for a prosecution against those who have exploited them. The younger a child is, the more careful investigators and prosecutors have to be in deciding whether it is right to ask them to become involved in a criminal trial.

The UK Human Trafficking Centre (UKHTC) will make relevant enquiries to establish whether they may be a potential trafficked victim. When information reveals the possibility that they may be trafficked the prosecutor and officer in charge of the case will be contacted to ensure that policy guidance has been followed and the evidence re-reviewed in the light of new information. Prosecutors are reminded of the principles contained within the CPS policy statement on Children and Young People and in particular, our commitment to always consider what is best for children in criminal cases.

## Prosecutions

For practical and legal guidance to prosecutors dealing with cases of human trafficking, prosecutors should refer to CPS policy guidance on human trafficking and smuggling, which can be found at: [http://www.cps.gov.uk/legal/h\\_to\\_k/human\\_trafficking\\_and\\_smuggling/](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/).

The guidance advises prosecutors on the range of statutory offences which may be used to prosecute trafficking cases, the evidential requirements for each offence and the relevant sentencing guideline cases.

The prosecutor is advised to take a victim-centred approach in all case management issues and decisions. This includes the support and protection of victims throughout criminal proceedings and helping them to give their best evidence at court.

Prosecutors should consider the range of measures available to support and protect trafficked victims giving evidence and make appropriate applications to the court. This includes the range of Special Measures to assist victims in giving evidence in court or, in cases where the victim has chosen to be repatriated and does not wish to return to the UK, consideration should be given to making application for them to give evidence through television link.

Prosecutors should also give consideration to witness anonymity in appropriate cases, reporting restrictions and interpreters.

Prosecutors' attention is also drawn to matters of deportation, compensation and Proceeds of Crime.

## Keeping records

The CPS will have specific security precautions in place for retaining client information and rules around client confidentiality. All organisations will need to institute extra safeguards for written, electronic and verbally communicated information on trafficked persons.

As trafficked persons are particularly likely to face security risks, be referred to other providers and/or transferred from the original care location (eg, internationally) or participate in one or more legal proceedings, it is especially important to follow good data management procedures to ensure the safety of each individual. Trafficking cases may involve organised criminal groups.

Central to managing information on trafficked persons are: privacy, confidentiality and security.

- > Privacy refers to the clients' right to control how they provide information, the use of this information and their access to it;
- > Confidentiality indicates the right of clients to determine who has or does not have access to their client information and for trafficked persons, suggests the importance of anonymity;

- > Security suggests the need to safeguard client files against security breaches during data collection, storage, transfer and use.

### **Data storage**

All information gathered from trafficked persons must be considered highly sensitive. In trafficking cases, it may be beneficial for all information to be classified as confidential and coded, rather than using the individual's name. Coding is a particularly useful way to protect clients, especially when data is shared.

Secure paper files. It is likely that during the course of providing support paper documents are created. All paper case files:

- > Must be kept secure and under lock and key safe from unauthorized entry at the establishment location;
- > Must never be left unattended on desks, in common areas, etc;
- > Must be disposed of by shredding or through similar disposal method when no longer needed.

Secure electronic files. In addition, electronic information files should be:

- > Stored in a secure information system;
- > Protected by individual passwords with access limited to key staff;
- > Never stored on personal computers or in such data storage devices as USB flash drives, compact discs, etc. Personal information should never be disclosed via email.

Even when coding is used, individual patients often can be readily identified by their basic data (demographic background, ethnicity, nationality, date of birth, family data, description of elements of the trafficking process, etc). Only key members of staff should have access to a client's primary case file.

Conduct a data risk analysis. Providers caring for trafficked persons may wish to undertake a data risk analysis to consider the implications of what is written in a file, the potential uses and misuses of client data and to develop strategies to avoid mishandling of data and to deal with information requests.

## **Guidelines on what to do if you suspect, or someone discloses that they have been trafficked**

If a prosecutor suspects that someone may have been trafficked, or a victim or suspect discloses that they have been trafficked, the prosecutor should follow the guidance outlined in this toolkit, make contact with HQ policy advisor on human trafficking, or contact the UKHTC directly for advice. Where information has come to light about a suspect's trafficked situation, that information should be disclosed to their legal representatives.

## What support/advice can you offer?

Prosecutors can refer suspected trafficked victims to the Competent Authority through the National Referral Mechanism to access relevant provisions under the Council of Europe Convention. This can be done by contacting the UK HTC and providing relevant information about their trafficked situation.

For support provisions, victims of sexual exploitation should be referred to the POPPY project, child victims to relevant local authority care and victims of non-sexual exploitation to Migrant Helpline or Kalayaan.