

Trafficking toolkit: Specific arrangements for the prison service

CRIMINAL JUSTICE SYSTEM



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SPECIFIC ARRANGEMENTS AND ADVICE FOR THE PRISON SERVICE

Responsibilities of the prison service

It is possible that victims of human trafficking could be charged and convicted of a number of offences including:

- > Immigration offences (eg forged identity/travel documents);
- > Petty crime;
- > Benefit fraud;
- > Selling pirated/bogus goods;
- > Prostitution related crimes (eg soliciting, controlling prostitution for gain);
- > Cannabis cultivation (particularly in relation to Vietnamese children);
- > Begging (particularly in relation to children from the A2 countries, Romania and Bulgaria, who are victims of exploitation by organised crime networks);
- > Trafficking related offences (eg facilitation, kidnapping).

Victims of human trafficking should not normally be charged with offences that are a direct consequence of the trafficking situation. Where this does occur the Crown Prosecution Service (CPS) can intervene and drop the charges on public interest grounds. However there will be occasions where the CPS may decide to continue with the prosecution and the individual is subsequently charged (with previous victimisation perhaps taken into consideration when looking at mitigating circumstances when sentencing):

- > The individual has previously been subjected to human trafficking but the actual offences are not necessarily a direct consequence of their situation (eg they may have *earned* their freedom and become part of the trafficking ring to recruit and exploit others)
- > The offences are so severe that it is in the public interest to pursue the charges.

In both these cases the previous victimisation will still need to be addressed. In addition, it is entirely possible to accept that someone has been a victim of the crime of human trafficking but at the time their case is considered (by either a Competent Authority or the CPS) decide that their specific circumstances do not engage the Convention obligations. A negative decision in such cases would not be denying that someone was or had been a victim of crime, but simply that at the time of assessment they did not meet the Convention criteria or need the protection that it can afford.

Role of the prison service in the National Referral Mechanism

Since 1 April 2009, a National Referral Mechanism provides a framework within which public bodies such as the criminal justice agencies, UK Border Agency, local authorities and third sector partners can work together to identify individuals who may be victims of trafficking and provide appropriate protection and support.

Front-line professionals refer individuals who they think may be evidencing signs of being a victim of human trafficking to a designated Competent Authority (CA) who will work with partners to make an assessment. Competent Authorities are:

- > A central multi-agency based in the UK Human Trafficking Centre (UKHTC); and
- > Linked but separate Competent Authorities in UK Border Agency to assess cases where trafficking is raised as part of an asylum claim or in the context of another immigration process.

If a member of staff feels that after consideration there are indicators to suggest that a prisoner may be a victim of trafficking, they should:

- > Approach the individual in order to obtain their informed consent that they wish to engage in the NRM, and be formally identified as a victim of trafficking;
 - » if consent is obtained, staff should contact the UKHTC.
- > Inform Criminal Case Directorate (CCD) that a referral has been made to the UKHTC where a prisoner has immigration concerns, or is a foreign national.

The referral should be considered within five days of receipt by the Competent Authority, within which they have to make a decision as to whether the prisoner has reasonable grounds for being considered as a victim of trafficking. During this period the CA may contact the member of staff for more information. The CA will inform the Crown Prosecution Service, who will make an assessment on the case on the grounds of *public order* and/or *public interest*. The prosecutor will cause further enquiries to be made, and if those enquiries confirm that the criminal offence, for which they have been convicted, was committed under duress, then they will inform the victim's legal representative.

Once a decision has been made, the CA will notify both the prisoner and the member of staff as to their decision.

Where the CA decides that there are reasonable grounds to believe that the prisoner is a victim of trafficking, the prisoner cannot be detained on immigration grounds or deported back to their home country until a conclusive decision has been made on the trafficking aspect. A conclusive decision will be made within 45 days of the reasonable grounds decision.

If a prisoner is to remain in prison during the 45 day period, the Prison Service is obliged to ensure that they receive:

- > Access to emergency medical treatment;
- > Translation and interpretation services;

- > Counselling and information, in particular as regards their legal rights and the services available to them, in a language they can understand;
- > Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders.

Your role in the process

Identifying victims

Individuals may disclose information in a variety of different situations. Information may be provided to different departments in a piecemeal fashion, and it is imperative that each establishment has a multi-disciplinary approach in dealing with trafficking.

Reception and first night:

- > Concern may be raised in initial interview, particularly in relation to health screening;
- > Markings and physical evidence of violence may be apparent when searching prisoners;
- > Individuals may express high need of attention in relation to their health and wellbeing;

Residential units:

- > Staff may note unusual and concerning behaviours, particularly a lack of engagement and isolation – and self-harm and suicidal indicators;
- > Personal officers may play a key role in disclosure, particularly where contact and rapport are frequent and strong.

Care and separation units:

- > Individuals may present themselves to these units at a high frequency due to their high level of need.

Healthcare:

- > Individuals may present a high level of health care needs and come into regular contact with health professionals.

Psychology Department:

- > During the course of one-to-one sessions, or group work, individuals may disclose information.

Chaplaincy:

- > May be a route which individuals feel safe to disclose information, without fear of repercussions.

Foreign National Groups:

- > Peer support may provide an open and transparent environment in which an individual feels safe to disclose;
- > Foreign national co-ordinators may play a key role in allowing an individual to disclose.

Substance Use Services:

- > During the course of treatment or programmes, individuals may disclose the reasons behind their abuse patterns.

Learning, skills and work:

- > As staff are not so readily perceived as *authority* figures, individuals may feel more able to disclose personal information.

Resettlement:

- > During the course of planning for reintegration back into the community, individuals may disclose information to staff which could raise suspicions as to their safety.

Immigration:

- > Individuals may disclose to immigration officers once the threat of deportation is real, or as a result of the uncertainty over their case.

Keeping records

Staff caring for persons who have been trafficked will need to institute extra safeguards for written, electronic and verbally communicated information on trafficked persons.

Central to managing information of trafficked persons are: privacy, confidentiality and security. These concepts are fundamental principles in handling trafficking-related data.

- > Privacy refers to the individuals' right to control how they provide information, the use of this information and their access to it;
- > Confidentiality indicates the right of the individual to determine who has or does not have access to their information and for trafficked persons, suggests the importance of anonymity;
- > Security suggests the need to safeguard files against security breaches during data collection, storage, transfer and use.

Personal information must be collected in a private setting. Both the individual and the member of staff must feel safe to speak freely. It is a good idea to ask individuals if they feel comfortable and ready to discuss their individual needs. Consider, for example, whether the individual wants the door open or closed, discourage other staff/prisoners from interrupting.

Any information collected from trafficked persons must be considered highly sensitive. In trafficking cases, data should be classified as confidential and only be passed on to certain members of the establishment.

Confidentiality

It is important to be clear about your professional boundaries and how far your role extends. It is important to state the limits of confidentiality; if you have concerns about a risk of serious injury, self-harm or child protection risks that these issues have to be referred on to the appropriate people: unit staff, child protection co-ordinator.

If you suspect or are informed that an individual has been trafficked, you should not contact the police or other authorities (eg, immigration staff) without the express permission of the trafficked person. Although you may be tempted to seek help or protection for individuals in your care by contacting authorities, this decision is one that should not be taken without consulting the individual.

Given adequate information and the opportunity to discuss their options, trafficked persons are generally in the best position to assess the risks and benefits of contact with others. Similarly, reporting information offered by trafficked persons to law enforcement should take place only with the consent of the trafficked person.

Information sharing

Victims will have been in situations where contact with outsiders is handled with suspicion and in some circumstances endanger the health and safety of themselves or their loved ones. Careless handling of personal information greatly increases that risk. Inter-agency co-operation is essential in correctly identifying and sufficiently supporting victims but the data that gets transferred between agencies must be heavily protected.

Sharing case information in prisons is often necessary for good case management. Individual files, electronic data and verbal case information must be transferred to other practitioners in an efficient and careful manner carefully.

All staff, including interpreters, should adhere to the following:

- > Only *need-to-know* information should be transferred to others. Only information that is pertinent to an individual's safety and care should be disclosed to other internal or external parties, on a *need-to-know* basis and with the consent of the trafficked person;
- > Discuss case information in private and in confidence. Never communicate about a trafficked person's case in a public or open environment;
- > A trafficked person's case history should never be discussed with family members, friends, other trafficked persons or third parties without the explicit consent of the individual.

You must obtain the consent of the individual before any referral is undertaken, unless there are child protection concerns or serious concerns over harm to selves or others. If you are referring the individual on to another organisation, you must specify what details you will be passing on. It must be remembered that victims could be extremely traumatised, and having to repeat information to a multitude of organisations will be detrimental to their health and well-being.

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

Staff need to maintain an active awareness of the vulnerability of the individual and their mental, emotional and psychological state when conversing with the individual and endeavour to use non-threatening body language.

Staff should work hard to establish a rapport with victims, making them feel comfortable and at ease. It is not uncommon for victims to feel both relief at having been identified and yet fear and suspicion toward an identifying member of staff. This is often linked to their fear of being returned to their trafficking situation, many having been told by their traffickers that the authorities would simply return them should they try to escape. It is also not uncommon for negative feelings (fear and suspicion) to give way to those of relief once the victim felt safe and came to trust the identifying member of staff.

Victims of trafficking may be reluctant to go into much detail about the full facts of their case. This may be because of cultural barriers, or simply due to the traumatic or humiliating nature of the treatment they have suffered. If this appears to be the case, staff should phrase their questions carefully and sympathetically. If the individual provides consent for their details to be passed on to the NRM staff should keep in mind the need to get as full an account as they can, while at the same time taking care not to cause undue distress.

What support/advice can you offer?

Staff must be aware of the support that is currently available in their own establishment. This varies from prison to prison and may be provided by Healthcare, Probation, Psychology, Chaplaincy or voluntary sector agencies, contracted in to provide information, advice and counselling support.

Foreign National Liaison Officers/Co-ordinators will be the main point of contact for many individuals identified as victims of trafficking.

Emotional support

- > Psychology department may be able to offer one-to-one counselling sessions. Independent and professional interpreting services should be utilised for those who do not have English as their first language;
- > The likely length of stay in the establishment should be taken into account and the women referred only to appropriately trained and experienced counsellors.
- > External counselling agency;
- > You should assure yourself of their suitability for doing this type of work;
- > Their work should be monitored regularly (including a contract or SLA);
- > Feedback from individuals about the appropriateness and helpfulness of support received should be gathered regularly;
- > Voluntary sector agencies for victims of trafficking, eg Hibiscus, Women in Prison.

Resettlement support

- > For individuals leaving prison shortly, referral to one of the community agencies listed in the guidelines;
- > Individuals will probably require hostel or refuge accommodation on release, but care and attention will be needed to ensure that they are not located back to areas where they will be re-trafficked.

Immigration support

- > It is unlawful for anyone other than an accredited immigration adviser to offer advice or information about an individual's immigration circumstances. Unaccredited people can merely provide general information, which the person concerned must interpret in the light of their circumstances; or point them in the direction of an accredited adviser;
- > Contact should be made with the named immigration officer working in your establishment to establish whether a referral has been made in relation to trafficking issues;
- > Contact should be made with NGOs in the home country (use the Change directory on intranet?) to ensure that the individual is not re-trafficked on arrival in their home country, or with the International Organisation for Migration (IOM) which offers voluntary return and reintegration assistance;
- > Prisoners may be eligible for the Facilitated Returns Scheme, the Assisted Voluntary Return for Irregular Migrants scheme or the Voluntary Assisted Return and Reintegration Programme. The IOM can offer assistance with all of the above.

Family contact/support

- > Foreign nationals should receive their monthly international telephone allowance.
- > Some individuals will not want to contact their family, as they do not want relations to know what has happened to them, as well as being fearful of being ostracised by their community on release.
- > Referral to family relationship programmes, where they exist, may benefit some.

Education, training and employment

- > Individuals may benefit from English as a Second Language (ESOL) classes;
- > Individuals may be keen to undertake employment that would aid them in getting jobs back in their home country, hence concentration on realistic referrals should be given.