



## **TACKLING FORCED LABOUR**

**Joint Working Agreement between**

**The Association of Chief Police Officers,**

**The UK Border Agency**

**The Gangmasters Licensing Authority and**

**The Crown Prosecution Service**

## **1. Statement of Intent**

- 1.1. This agreement outlines the best practice for joint working between the Police Service, the Gangmasters Licensing Authority (GLA), the UK Border Agency (UKBA) and the Crown Prosecution Service (CPS) in England and Wales, and also to provide a basis for local agreements if required. While the parties to the agreement cannot enforce measures locally they will endeavour to promote, encourage and support local agreements and implementation of the best practice set out in this agreement.
- 1.2. All parties agree that there is a strong public interest in investigating and prosecuting those who either traffic or smuggle victims into or within the UK for forced labour or hold another person(s) in slavery or servitude or require them to perform forced or compulsory labour. However, responsibility for enforcement and regulation of exploitative labour providers currently lies with a range of agencies which have no means of referring cases for criminal prosecution.
- 1.3. The GLA are in an advantageous position to identify potential cases of Gangmasters exploiting and harming victims of forced labour but the statutory basis on which they are established restricts them from carrying out effective criminal investigations to support the criminal offences outlined in Annex 1. The ideal position would be improved co-operative working between the GLA, the UK Border Agency and the police, to investigate these cases and refer them to CPS for criminal prosecution
- 1.4. All parties will encourage a pro-active approach to investigation and, where appropriate, seek advice from the CPS on evidential requirements to support prosecution and seek the strongest possible action in suitable cases.

### **Previous MoUs and other Agreements**

- 1.5 This Agreement complements the existing national Memorandum of Understanding (MOU) between the GLA and ACPO and the GLA and UK Border Agency MOU.

## **2. Parties to the Agreement**

### **The Association of Chief Police Officers (ACPO)**

- 2.1. The role of ACPO is set out in their 'Statement of Purpose' –

ACPO is an independent, professionally led strategic body. It leads and coordinates the direction and development of the police service in

England, Wales and Northern Ireland, in the public interest and, in equal and active partnership with Government and the Association of Police Authorities. . In times of national need ACPO, on behalf of all chief officers, coordinates the strategic policing response.

### **The Gangmasters Licensing Authority (GLA)**

2.2. The role of the GLA is to safeguard the welfare and interests of workers whilst ensuring labour providers operate within the law. This role is discharged by:

- licensing labour providers,
- ensuring compliance with the licence conditions;
- taking enforcement action against those who operate illegally or who for other reasons are judged unfit to hold a licence; and
- supporting enforcement of the law, by or in conjunction with the enforcement authorities of other government departments, and others as appropriate, through shared information and joint working.

### **The UK Border Agency (UKBA)**

2.3. The UK Border Agency (UKBA) in partnership with Border Force are responsible for controlling migration to the UK for the benefit of the country. In particular UKBA are responsible for immigration casework, in-country enforcement and removals activity, the immigration detention estate and our overseas immigration operations. A critical area is the disrupting of criminal networks involved in organised immigration crime.

### **The Crown Prosecution Service (CPS)**

2.4. The CPS is the principal public prosecution service for England and Wales. Although the prosecution service works closely with the police and other investigators, it is independent of them. Casework decisions are taken fairly, impartially and with integrity help to deliver justice for victims, witnesses, defendants and the public.

2.5. It is the duty of prosecutors to review, to advise on and to prosecute cases and ensure that the law is properly applied in accordance with the principles set out in the Code for Crown Prosecutors.

## **3. Extent of the agreement**

3.1. This agreement is restricted to the investigation of cases involving victims of forced or compulsory labour or those who are held in

slavery or servitude. It will support prosecutions by the CPS for the following criminal offences:

- Trafficking for exploitation where the individual is a victim of behaviour contravening Article 4 of the ECHR (slavery or forced labour) under section 4 of the Asylum and Immigration Act 2004; or
- Holding another person in slavery or servitude or requiring them to perform forced or compulsory labour contravening section 71 Coroners and Justice Act 2009;
- Other criminal offences disclosed as part of the investigation into the above matters.

3.2. The agreement does not include other breaches of regulations or standards set by the GLA or UKBA. Responsibility for enforcing those standards will remain with those agencies.

3.3. This agreement covers the investigation and prosecution of offences in England and Wales only. However the parties can encourage a similar approach from relevant investigating and prosecuting agencies in Scotland and Northern Ireland.

#### **4. Investigation**

##### ***Police or UKBA investigation:***

4.1 Where investigations are led by the police or UKBA's CFI-Immigration Teams into incidents which reveal criminal offences of forced or compulsory labour, or trafficking for exploitation of victims for that purpose, responsibility for the case will remain with them.

4.2 Where the offence involves the industry sectors for which the GLA has responsibility, the GLA should be contacted through its national intelligence section to provide advice and guidance. Where no prosecution or sanctions by the police or UKBA result from the incident, the GLA may consider appropriate sanctions within their remit without reference to the police.

##### ***GLA investigation:***

4.3 Where investigations are led by the GLA into possible breaches of their licensing standards, but which reveal potential criminal offences of forced or compulsory labour or trafficking for those purposes or other criminal offences, the GLA should contact the police and / or the UK BA.

4.4 The police or UKBA (CFI- Immigration) should take the lead for the criminal investigation, or investigate jointly with the GLA and / or

UKBA, or where criminal investigation is declined, refer the incident back to the GLA for licence enforcement.

- 4.5 There might also be consideration of referring the incident to other agencies such as the Health and Safety Executive (HSE) or Department for Works and Pensions (DWP) where breaches of their regulations might be disclosed.
- 4.6 In circumstances where a GLA investigation reveals harm, behaviour or conduct which would not be adequately addressed through licence enforcement, and which is outside the GLA's remit, it will refer the situation as follows:

Immigration related matters – to UKBA (in line with the GLA-UKBA MOU)

Immigration/criminal matters – to UKBA (CFI – Immigration)

Criminal matters only - police

Where the investigation identifies more serious and organised criminality the relevant UKBA CFI – Immigration team or police will liaise with SOCA or its successor organisation(s).

***Joint investigation:***

- 4.7 In cases where the police or UKBA (CFI - Immigration) decide to investigate criminal offences which arise from an incident in which the GLA are involved, a joint investigation should be considered. The benefits include the GLA's experience and operational expertise of employment legislation, treatment of workers, their terms and conditions of service and in interviewing potential victims in this related crime area. However the lead for investigative purposes should always lie with the police or the UKBA (CFI - Immigration).
- 4.8 Where a joint investigation is to be considered, arrangements should be agreed locally in advance of the investigation to identify the lead officers, roles and responsibilities and exchange of information and intelligence.
- 4.9 Where there is a joint investigation, material evidence and information obtained during the course of investigations should be exchanged and shared in accordance with the Criminal Procedure and Investigations Act 1996 (the Act) and the Code of Practice issued under it (the Code). The police disclosure officer should take primary responsibility for all material.

## **5. Pre-charge advice**

- 5.1 Where the GLA has investigated a case which has revealed potential criminal offences, the police can refer evidence obtained by the GLA to a CPS prosecutor for early investigative advice or charging decision, in accordance with the [Director's Guidance on Charging](#).
- 5.2 In advice cases where a criminal offence is revealed that could or would normally be prosecuted by another prosecution authority the prosecutor should check that the police have notified the relevant prosecution authority/agency and consider whether the case may be more appropriately handled by the authority/agency concerned.
- 5.3 Where there may be some doubt as to the appropriate authority the prosecutor should always discuss the matter with the other prosecuting authority/agency with an interest and agree who is to prosecute the matter.

## **6. Preparation and submission of case papers**

- 6.1 Case papers should be submitted by the police or UKBA to CPS in accordance with the Manual of Guidance.

## **7. The decision to prosecute**

- 7.1 It is the duty of prosecutors to review, to advise on and to prosecute cases and ensure that the law is properly applied in accordance with the principles set out in the Code for Crown Prosecutors. A prosecution can only start or continue when the case has passed both stages of the Full Code Test. Prosecutors make charging decisions in accordance with this Code and the DPP's Guidance on Charging. The Full Code Test will be applied wherever possible, other than in limited circumstances where the narrower threshold test applies

### **The full code test**

- 7.2 The full code test has two stages. The first stage is consideration of the evidence. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. If the case does pass the evidential test, prosecutors must go on to consider whether a prosecution is required in the public interest.

### **The first stage – the evidential stage**

- 7.3 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. This means that an objective, impartial and reasonable jury or a bench of magistrates or a judge hearing the case alone and acting in

accordance with the law is more likely than not to convict the defendant of the charge alleged.

### **The second stage – the public interest test**

- 7.4 If the case does pass the evidential test, prosecutors must then decide whether 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 clearly outweigh those tending in favour, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal.
- 7.5 This agreement does not remove the need for each case to be considered on its own merit or restrict the discretion to prosecute the most appropriate offence depending on the facts of the case.

### **Particular aggravating factors in offences involving harm to victims of forced labour**

- 7.6 Examples of particular aggravating factors would include:
- a conviction is likely to result in a significant sentence
  - the offence involved the threat of violence
  - the offence was committed in order to facilitate more serious offending
  - the victim of the offence was in a vulnerable situation and the suspect took advantage of this
  - there are grounds for believing that the offence is likely to be continued or repeated

## **Prosecution by other prosecuting agencies**

- 7.7 Difficulties may arise when it is not clear who has instituted proceedings or there are overlapping interests and the same subject is being prosecuted by different agencies, or a single investigation has revealed offences which are normally prosecuted by separate agencies.
- 7.8 Proceedings are instituted by the police only when they have investigated, arrested and brought the arrested person to the custody officer (**R -v- Stafford Justices ex parte Customs and Excise Commissioners (1991) 2 All ER 201**). (Archbold 1-254)
- 7.9 Prosecutions are regularly brought by other prosecuting agencies where the body concerned has a particular expertise or statutory interest. In general the CPS will neither wish nor need to intervene in such cases.
- 7.10 However, there may be circumstances in which it may be appropriate for the CPS to take over proceedings, particularly in cases which reveal criminal offences under sections 12 or 13 of the Gangmasters (Licensing) Act 2004, in addition to other serious criminal offences investigated by the police. Often charges are founded on the same facts or form part of a series of offences of a similar character. In these situations, guidance should be sought under the Prosecutors Convention on conduct of proceedings.
- 7.11 **Prosecutors' Convention (Convention)**

This is an agreement between the CPS and 16 prosecution authorities (Attorney General's Office, Civil Aviation Authority, Department of Business, Enterprise and Regulatory Reform, Department for the Environment , Food and Rural Affairs, Department of Work and Pensions, Environment Agency, Financial Services Agency, Food Standards Agency, Gambling Commission, Health and Safety Executive, Maritime and Coastguard Agency, Office of Fair Trading, Office of Rail Regulation, Revenue and Customs Prosecution Office, Serious Fraud Office and Service Prosecuting Authority) to abide by broad principles which promote improved liaison and a co-ordinated approach to decision making where two or more signatories have a common interest.

The latest revision of the Convention was published on 1 April 2009. A copy of the [Prosecutor's Convention](#) is available.

## **8. Communication**

**Strategic Level:** Responsibility for the management of this agreement and handling of any complaints arising from it:

The GLA Director of Strategy

ACPO lead for Migration and Associated Matters

UKBA head of Crime Directorate within Criminality and Detention Group

CPS Director of Strategy and Policy

### **8.1 Operational Level:**

GLA: The Intelligence Manager is responsible for the provision of information to the police/ UKBA (CFI - Immigration) teams.

ACPO: The relevant Police Force Intelligence Bureau will receive, develop and disseminate any intelligence. This will then be tasked accordingly to the relevant team within the force area, the region or external agencies as appropriate.

UKBA: UKBA Regional Intelligence Units will develop and disseminate intelligence to the relevant UKBA (CFI - Immigration) Team for investigation.

CPS: Investigation officers from the other protocol signatories will identify the relevant CPS representative to ensure that multi-agency investigations are effectively supported.

## **9. Review of Protocol**

9.1 The protocol will be reviewed one year after its commencement.

## 10. Signatories to the Protocol

Olivia Pinkney  
Assistant Chief Constable

Ian Livsey  
Chief Executive, GLA

Nick Hunt  
Director of Strategy and Policy  
CPS

David Wood  
Chief Operating Officer  
UKBA

### **Offences (summarised)**

#### **Section 71 Coroners and Justice Act 2009<sup>1</sup>**

##### **Slavery, servitude and forced or compulsory labour**

A person (D) commits an offence if:

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

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

A person guilty of an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both; or on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

#### **Section 4 Asylum and Immigration (Treatment of Claimants etc) Act 2004 Trafficking people for exploitation<sup>2</sup>**

A person commits an offence if he arranges or facilitates the arrival in or the entry into, within or out of the UK of an individual, and

- a) he intends to exploit the person in the UK or elsewhere, or
- b) believes another person is likely to.

For the purposes of these offences, a person is exploited if he is:

- a) the victim of behaviour contravening Article 4 of the ECHR (slavery or forced labour);
- b) encouraged, required or expected to do something which would mean an offence is committed under the Human Organ Transplants Act 1989;
- c) subjected to force, threats or deception designed to induce him to provide services of any kind, to provide another person with benefits of any kind, or to enable another person to acquire benefits of any kind;
- d) a person uses or attempts to use him for any purpose within paragraph c, having chosen him for that purpose on the grounds that: he is mentally or physically ill or disabled, he is young or has a family relationship with a person.

A person guilty of an offence under this section is liable on summary conviction, to six months imprisonment, fine up to the statutory maximum or both; or on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both. This offence is also a "lifestyle offence" for the purposes of the Proceeds of Crime Act 2002.

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<sup>1</sup> Full text: <http://www.legislation.gov.uk/ukpga/2009/25/section/71>

<sup>2</sup> Full text: <http://www.legislation.gov.uk/ukpga/2004/19/section/4>

## **Section 12<sup>3</sup> and 13<sup>4</sup> of the Gangmasters (Licensing) Act 2004:**

### **Section 12: acting as a gangmaster, being in possession of false documents**

(1) A person commits an offence if he acts as a gangmaster in contravention of section 6 (prohibition of unlicensed activities). For this purpose a person acting as a gangmaster does not contravene section 6 by reason only of the fact that he breaches a condition of the licence which authorises him to so act.

(2) A person commits an offence if he has in his possession or under his control a false, or improperly obtained document with the intention of inducing another person to believe that he or another person acting as a gangmaster in contravention of section 6 is acting under the authority of a licence.

A person guilty of an offence under this section is liable on summary conviction:

to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the statutory maximum, or to both; or on indictment to imprisonment for a term not exceeding ten years, or to a fine, or to both.

This offence is a "lifestyle" offence under the Proceeds of Crime Act 2002.

### **Section 13: entering into arrangements with gangmasters**

(1) A person commits an offence if—

- (a) he enters into arrangements under which a person ("the gangmaster") supplies him with workers or services, and
- (b) the gangmaster is unlicensed, contravening Section 6 (prohibition of unlicensed activities).

(2) In proceedings against a person for an offence under subsection (1) it is a defence for him to prove that he—

- (a) took all reasonable steps to satisfy himself that the gangmaster was acting under the authority of a valid licence, and
- (b) did not know, and had no reasonable grounds for suspecting that the Gangmaster was not the holder of a valid licence.

(4) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding the statutory maximum, or to both,

This offence is also a "lifestyle" offence under the Proceeds of Crime Act 2002.

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<sup>3</sup> Full text: <http://www.legislation.gov.uk/ukpga/2004/11/section/12>

<sup>4</sup> Full text: <http://www.legislation.gov.uk/ukpga/2004/11/section/13>