



CPS

CPS Policy for Prosecuting Cases of Human Trafficking

May 2011

CPS POLICY FOR PROSECUTING CASES OF HUMAN TRAFFICKING

Contents	Page
Introduction	2
What is human trafficking?	4
What is smuggling?	7
The role of the CPS	8
The Code for Crown Prosecutors	9
Legislation	11
Financial powers	12
Building a prosecution case	13
Victims and Witnesses	16
Child Victims	21
Victims of forced labour and servitude	25
Acceptance of pleas	26
The Prosecutors role in sentencing	27
Prosecuting suspects who might be trafficked victims	30
Complaints	32
Conclusion	32
Annex A: Legislation	33
Annex B: Contact details	34
Glossary of Terms	37

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 men, women 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 who may themselves be subjected to threats or be in debt to traffickers; it causes harm to the victims and to society as a whole.

The most effective means of combating trafficking are prevention and disruption – by dismantling the criminal network; successful prosecutions and confiscating assets which are the proceeds of crime. 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 crime 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 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 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. Research has shown that human trafficking for the purposes of sexual exploitation disproportionately affects women; 75% of referrals made to the National Referral Mechanism were for female victims, and the UN estimates that 79% of all trafficking victims are women and girls. In making these links prosecutors can make connections and transfer good practice between crimes of violence against women.

However, it is acknowledged that whilst there is an over-representation of sexually exploited women, it remains likely that labour exploitation and male victims are relatively under-detected; male victims are less likely to report their trafficking and exploitation. Boys and young men are also equally at risk of sexual exploitation; the CPS does not neglect the abuse directed towards them. All of our policies are gender neutral and will be applied fairly and impartially.

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 and what that charge or charges should be. It explains 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.

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 may not be familiar to everybody. We have therefore set out a glossary of terms at Annex C in which we have defined some of the words and phrases used.

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 government and [non government agencies](#) together with the police and the courts to provide them with appropriate protection and support to ensure their safety and to help them to give evidence. The CPS will consider the range of measures available to support and protect trafficked victims to encourage them to give their best evidence and make appropriate applications to the court.

Children

Children are particularly vulnerable to trafficking and exploitation and are likely to require extra support. Child trafficking is first and foremost a child protection issue; child victims 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, the CPS will positively engage with other authorities and agencies to support them in safeguarding children and in deciding what is the best way to help them. Children are often trafficked into criminal activities; their first encounter is likely to be with law enforcement. In these circumstances prosecutors must work with law enforcement and organisations that support child victims of trafficking, to ensure that all relevant information is available and that all appropriate assessments are undertaken.

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 agencies in the criminal justice system, community groups and organisations which support victims and witnesses in identifying ways to improve our collective response. This

includes more effective disruption, prevention, investigation and prosecution, including restraint and confiscation of assets, as well as improving victim and witness care and protection. We know that non-government organisations will often have greater experience of victims and their differing needs, and we recognise the important role they play.

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 combat trafficking. We do this by helping law enforcement and prosecutors in other developing countries to investigate and prosecute cases of trafficking themselves, as well as raising awareness of trafficking. By building capacity in these countries – which is the expertise and knowledge of how to identify, investigate, and prove offences - we aim to help them to prosecute its offenders and its 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.

What is human trafficking?

Human trafficking is the acquisition of people through the use of force, coercion, deception, through debt bondage 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; it is not always visible - exploitative situations are frequently covert and not easily detectable.

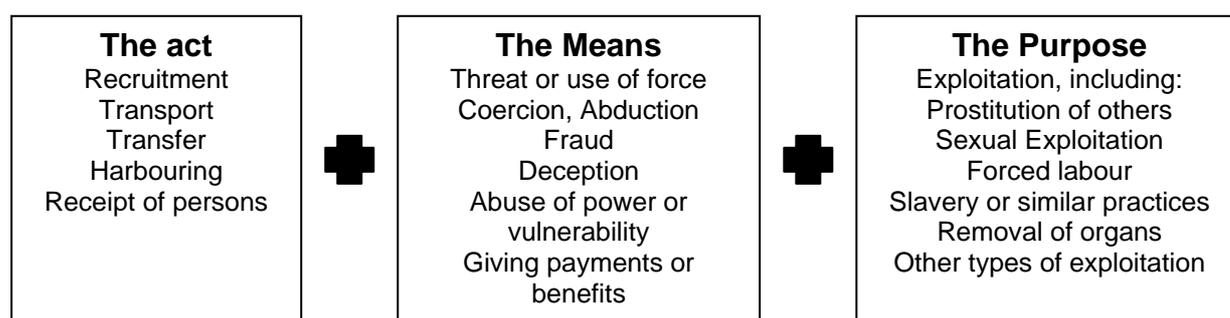
The Palermo Protocol¹ provides the first internationally recognised definition of human trafficking:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments

¹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organised Crime. This was adopted by the United Nations in 2000 in Palermo, Italy

or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

Human trafficking usually has three constituent elements which are explained in the table below²



= TRAFFICKING

Human trafficking is often considered to be organised crime committed on a large commercial scale. But trafficking covers a range of criminal activity, and 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 exploiting them. For child victims, consent is irrelevant therefore there is no requirement to show the means. *The Palermo Protocol* regards children as victims of trafficking whether or not they are evidenced as coerced or deceived into their situation.

The purpose does not always have to be achieved for there to be an offence of trafficking; it is sufficient for there to be an intention to exploit. The different

² Taken from the UNODC website.

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

- **Sexual** – frequently through forced sexual exploitation, where victims are placed into off-street brothels, forced to see many clients, and receive either little or no money. Victims may also be transported to clients in hotels or their homes or forced to work on the streets. They regularly suffer sexual and physical violence and abuse. Whilst it predominantly affects women, sexual exploitation also involves young girls, boys and men.
- **Forced labour** – where victims are forced to work very long hours in hazardous conditions and hand over the majority or 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. There may be threats made to expose the victim to the authorities, for example because of their immigration status, or their passports are confiscated. Many victims or their families are in debt bondage. In some cases the victim may not immediately be aware of their exploitation when given work, transport and accommodation, but their wages may be reduced significantly to pay excessive contributions for those services which may be poor quality and present safety risks.
- **Domestic Servitude** – victims who live and work in households where they are forced to work through threats of serious harm and may be subjected to physical and sexual assaults. There is often restriction of liberty and movement and victims may not be able to leave their accommodation. In essence it is a form of slavery.
- **Enabling others to acquire benefit** - this includes money from state financial assistance such as child benefit, but also includes any benefit derived by the trafficker such as profit, personal benefit or privilege. Victims are often deceived or coerced into helping their traffickers or they may be used by traffickers knowing they are too young or disabled to realise why.
- **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 by family members or families are in debt bondage to traffickers and their children are put into forced labour or domestic work where they are vulnerable to sexual or physical abuse. Children may be abducted, or handed over by their parents in the belief that they may have a better life and access to education. Sometimes trafficking can be hidden under the guise of private fostering. Children are also vulnerable to being used in criminal enterprises, working in cannabis farms or pick-pocketing (theft) gangs. Some are

unaccompanied asylum-seeking children who can be preyed upon by those who exploit them to enable others here to acquire benefits. British children can also be vulnerable to traffickers who groom, exploit and sexually abuse them before moving them around other towns and cities where the sexual exploitation continues.

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; often payment is made to the smuggler. Common reasons for individuals seeking to be smuggled include employment and economic opportunity, or 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. During their journey they may be subjected to unsafe conditions whilst travelling to their destination, subjected to sexual or physical abuse or be forced to participate in other criminal activities. Often there may be more than one person or group involved in facilitating the travel of trafficked victims who may be bought and sold several times in the course of their journey. It is important to examine the end situation when the victim is recovered 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.

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-government agencies.

Human trafficking cases tend to be 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 the 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 in building strong cases. SOCA has responsibility for the UK Human Trafficking Centre and the Vulnerable Persons Team, which provides advice and guidance to police forces in investigating cases of trafficking, as well as support and evidential interviewing of vulnerable victims of trafficking. The CPS has 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 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 victims and other views, we are not their legal representative and cannot act on their behalf. The CPS prosecutes cases on behalf of the Crown.

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 (or immigration officers) in line with the test set out in the Code. The Full Code Test 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" (Code for Crown Prosecutors paragraph 4.16). If the evidential stage is passed, the more serious the offence or the offender's record of criminal behaviour, a prosecution is almost certainly required in the public interest.

It will usually be in the public interest to prosecute cases of human trafficking 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:

- 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.

But these are only examples and not meant to be exhaustive.

However, prosecutors will also have to consider public interest factors which may tend against a prosecution; this includes:

- 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" paragraph 4.18 of the Code. 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 the victim, victim's family, or by the Local Authority where a child is in their care.

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 Crown 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.

In some instances, a prosecution may not go ahead. This does not mean that the victim is not believed. Where prosecutors have a responsibility to explain their decision to the victim, for example, when they discontinue or substantially alter one or more charges 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

Prosecutors will apply the Full Code Test unless the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged. The

Threshold Test may be used to charge a suspect who may justifiably be detained in custody to allow evidence to be gathered to meet the Full Code Test. The full meaning of the Threshold Test and the circumstances in which it would be applied are fully set out in the Code for Crown Prosecutors.

Legislation

This section outlines the main criminal legislation relevant to human trafficking. More information on the range of offences that can be charged is contained in [Annex A](#)

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 sexual offences which are covered in more detail in the separate section on [child victims](#) and [Annex A](#).

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. In circumstances where the trafficking is difficult to evidence, we can prosecute for holding another person in servitude or requiring them to perform forced labour (see *section 71 Coroners and Justice Act 2009*)

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 above (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 offences are either way which means that they 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 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. This means that the court can assume that all the assets the defendant has acquired over the last 6 years are from crime and the defendant has to prove otherwise. This enables us to confiscate the defendant's money.

The 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 directs others to commit a trafficking offence

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 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 of their victim.

Prosecutors should consider a range of other offences then with which to charge suspects, depending on the facts of the case. These other offences may be in addition to, or instead of, 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 Code for Crown Prosecutors](#) section.

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 through restraining and freezing their assets under the Proceeds of Crime Act 2002 at an early stage of the investigation. 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.

An agreement between the police and 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 working with investigators ensure that all avenues of enquiry are pursued and that evidence is obtained to construct a strong case to put before a court. In cases of human trafficking, it is highly likely that prosecutors will be involved at an early stage in the investigation to advise the investigator on the evidence, how it can be obtained from overseas and also the restraining of criminal property.

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.

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. Eurojust³ will assist in these cases by facilitating the co-ordination of cross-border investigations and prosecutions and the exchange of information between EU Member States. This is particularly important where offending occurs in more than one country.

When police to police enquiries to gather evidence from overseas in an informal manner 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 a letter of request and issue it 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 in accordance with the Code for Crown Prosecutors. 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. For this reason it is important to identify trafficked victims at an early stage and ensure their safety. We know that specialist support to the victim will be needed in cases of human trafficking, for example through counselling. Prosecutors will consider how best to support them giving evidence in light of the often close, controlling and dependent 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

³ Eurojust) was established in 2002. It is a permanent network of 27 experienced prosecutors, one from each EU State, whose task is to improve the effectiveness of cross-border investigations and prosecutions in the EU.

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. This close co-operation can help prepare and encourage victims before trial. There are also measures which we can apply to the court for in order 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, eg a brothel, together with recovery of exhibits such as false passports, mobile phone text messages or recovery of large sums of money; or
- 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 case of human trafficking, 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.
- **Forensic** 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 from 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 victims and potential victims 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 that specialist support will be needed from support providers.

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 men and women. 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 exploited by their abusers commercially. Exploiters can also be women, who appear as a carer or friend of the victim. [See *Child Victims*](#).

We know that victims often face barriers in coming forward and giving evidence. They do not always wish to, and they are sometimes unable to, cooperate 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 have a distrust of the authorities because of the culture or experiences in their home country. Victims may also be facing conflicting interests such as pending applications for asylum which might impact on their willingness to engage.

Prosecutors should also recognise the diversity of victims. As experiences of trafficking are undoubtedly different and affected by the victim’s 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

The early identification and protection of victims are a priority. 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. In implementing the Council of Europe Convention on Action against Trafficking in Human Beings in April 2009, the UK Government introduced mechanisms to identify and protect victims of trafficking and to safeguard their rights. It created provisions for support to victims through a 45 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 or owing to their personal circumstances.

For victims of trafficking this means a first responder (an authorised agency) who encounters them can make a referral to either the UK Human Trafficking Centre (for EU victims) or the UK Border Agency (for non EU victims) to

access these provisions. The potential victim's case is considered and, if approved, the victim is given an extendable 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 a range of 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 go to the credibility of the victim or other prosecution witnesses.

More detailed information on these provisions can be found at [Council of Europe Convention](#)

Code of Practice for Victims of Crime

Victims have 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 taken by the CPS. In cases where, following discussions between an investigating officer and a Crown Prosecutor, 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 discontinue any charge, the CPS must notify a vulnerable or intimidated victim within one working day and for other victims within 5 working days.
- In certain cases, for example those 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 following the provision of a full evidential report by the police to the CPS for a decision on charge. This also applies to cases where a decision is made to discontinue or substantially alter charges. [See also *keeping victims informed*](#).

- In cases where the victim is a child, then parents / carers should be notified.
- 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 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 at the [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. A vulnerable or intimidated witness is a witness whose evidence is likely to be diminished by reason of fear or distress. 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. Video recorded cross-examination can also be considered admissible if the witness has already been permitted to give their evidence in chief on video prior to the court case. 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.

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

Special Measures

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 live link,
- 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.

Other measures

- 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 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 in court. The CPS will only engage interpreters who are competent, qualified and security vetted.

The victim must be afforded the opportunity to make a Victim Personal Statement (VPS) by the police. It allows a victim to explain how a crime has affected them personally. Child witnesses who are victims should also be given the opportunity to make a VPS after completing a video-recorded interview or written statement.

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 victims' support provider. That same officer will also keep the victim informed about the outcome of the case – the verdict and sentence.

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, 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 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 a person under 18 years of age. Child trafficking is the practice of transporting children into, within and out of the UK for the purposes of exploitation.

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 the child or family might be 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 girls or boys leading to sexual exploitation by organised crime gangs in the UK. 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 range from swapping food, drugs, alcohol or cigarettes for sexual favours. They may be sexually abused before being taken to other towns, cities and venues where the sexual exploitation continues.

However, not all cases of child sexual exploitation and abuse will be considered to be internal trafficking. Where evidence obtained by investigators supports an offence of trafficking within the UK, this will be considered by the prosecutor. Where other serious sexual offences involving the exploitation of children under 18 are disclosed, the prosecutor will select the most appropriate charges to fully reflect the criminality. These offences carry significant penalties and may be charged if the evidence and criminal behaviour does not support offences of human trafficking. Some of these offences are identified in [Annex A](#).

If a child is identified by police during operations, the Children's Services will be notified immediately so that a child protection plan can be put into place and a strategy discussion co-ordinated. Children's Services are responsible for accommodating the child and will action a section 47 investigation at the appropriate time.

We know that there is also a risk that trafficked children may go missing from Local Authority care. A number of local authorities have set up multi-agency arrangements to enhance their collective response for safeguarding and preventing trafficked children from going missing.

When to prosecute

The use of a child in a criminal enterprise is a form of child abuse. Children who may be forced into sexual exploitation, 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 public interest grounds, where information or evidence has been obtained to support that. Further information on this appears in the section [Prosecuting suspects who might be trafficked victims](#).

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 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 have been sexually exploited, 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 for Vulnerable or Intimidated Witnesses, including Children”](#) 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.

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 court room. If evidence is to be given by live link, a supporter should sit near the witness.

Specialised child witness support

In some cases, there may be consideration of pre-trial therapy for child victims to provide them with both emotional support and counselling to decrease their distress or psychological symptoms and behaviour, or improve their personal functioning. Whether a vulnerable or intimidated witness should receive therapy before trial is not a decision for the police or prosecutors. However, prosecutors should have regard to multi-agency guidance at [Provision of Therapy to Child Witnesses Prior to a Criminal Trial](#).

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.

Further guidance can be found in the 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](#)

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 re-enforced in the Council of Europe Convention on Action against Trafficking in Human Beings.

Where there is uncertainty about a suspected victim's age, 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.

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 PNC printout verified by fingerprints as well as oral evidence from people who know the child.

For further reference on age assessment refer to [R \(on the application of A\) v London Borough of Croydon \[2009\]](#); [R \(M\) v London Borough of Lambeth \[2009\]](#) This case concerned the duty imposed on local authorities in providing services under the Children's Act 1989 in instances where the local authorities disputed age and assessed them as adults.

Victims of forced labour and domestic servitude

Whilst there is greater awareness of trafficking for the purpose of sexual exploitation, 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.

All forced labour includes unacceptable working conditions, but not all such working conditions constitute forced labour. Forced labour alone is just one, but often the most serious element of the exploitation experienced by trafficking victims. It crucially implies the use of coercion and lack of freedom/choice afforded to the victim (as is implicit in the use of the term 'trafficking'). The [International Labour Organisation](#) (ILO) has suggested six elements which, either individually or together, can indicate forced labour:

- threats or actual physical harm;
- restriction of movement and confinement to the workplace or to a limited area;
- debt-bondage;
- withholding of wages or excessive wage reductions, that violate previously made agreements;
- retention of passports and identity documents (the workers can neither leave nor prove their identity and status);
- threat of denunciation to the authorities where the worker is of illegal status.

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.

A further, specific offence which criminalises servitude and forced labour is Section 71 of the Coroners and Justice Act 2009 which creates 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 is

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. This also carries the same penalties as trafficking for forced labour.

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. They may be aware that they are paid less than the minimum wage and work long hours, but consider their situation here to be better than that offered in their home country. We want victims to know that our aim is to prosecute those who have committed these criminal offences against them. Part of that process must include raising awareness of victim's rights and how they may have been deceived. 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 usually 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 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. There are a number of [support providers](#) who provide dedicated support and assistance to victims of labour exploitation.

The CPS is working with the Gangmaster Licensing Authority (GLA) and ACPO to improve the identification of victims and increase the numbers of investigations and prosecutions against exploitative employers in agricultural and packing industries. The GLA is in an advantageous position to identify potential gangmasters who might be committing offences of trafficking and exploiting victims of forced labour.

Acceptance of Pleas and Sentencing

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 offences other than human trafficking offences such as rape or false imprisonment, which carry more severe punishment than human trafficking. 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 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 with some offences but not with 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).

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 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 judges pass a sentence which has similar aggravating or mitigating factors but the sentence appears to fall significantly lower than the guidelines advise, we can consider referring this case to the Attorney General to review the sentence for appealing as an unduly lenient sentence (*see below*)

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 applied for at the sentencing stage.

These are just a few examples of some of the Ancillary Orders we can apply 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;
- Serious Crime Prevention Orders (SCPOs)
- 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 who 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
- Registration on the Sex Offenders Register
- 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,

Appealing unduly lenient sentences

If the judge passes a sentence which the prosecution considers to be unduly lenient because it does not 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 thinks the sentence is unduly lenient, the Attorney General can refer it to the Court of Appeal. However, not all of the Human Trafficking legislation is capable of being referred as an unduly lenient sentence; trafficking for non-sexual exploitation under section 4 Asylum and Immigration Act 2004 is not an offence which is referable.

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 claim compensation 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 is often a bar to this course of action.
- Through the Criminal Injuries Compensation Authority (CICA). This scheme compensates for personal injuries 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. A victim claiming mental injury without physical injury must demonstrate they were put in considerable fear of immediate physical harm.

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*. This guide also provides advice on the mechanisms to pursue compensation under civil law and, for victims who have been exploited for forced labour or domestic servitude, through Employment Tribunals.

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, but who might be trafficked victims. This most frequently arises when they have been trafficked or smuggled here to commit criminal offences, but can arise in circumstances where they are escaping from their trafficking situation.

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 further information. Our [guidance](#) advises prosecutors that when reviewing a case in which there are suspicions that the suspect might be a victim of trafficking, they should cause enquiries to be made and obtain further information about the circumstances in which the suspect was apprehended. Information may also be considered from other sources, such as a non government organisation that supports trafficked victims.

If new information or evidence supports the fact that the suspect has been trafficked and has committed the 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. [But see Children and Youths section below]

The guidance 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 Courts in the case of [R v O \[2008\] EWCA Crim 2835](#) which highlights the need for prosecutors and defence lawyers to take all reasonable steps to identify victims of trafficking and be pro-active in causing enquiries to be made.

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 is only relevant where the criminality is as a direct consequence of the trafficking situation. There must also be consideration of the extent to which the victim was compelled to undertake the unlawful activity.

Identification and referral through the National Referral Mechanism should assist in the detection of victims of trafficking before they are arrested or charged. Where victims have received either a *reasonable grounds decision* or a *conclusive grounds decision* that they are a trafficked victim, this should be taken into account when considering the decision to proceed with a prosecution.

The CPS cannot give a guarantee of immunity from prosecution to 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 for Crown Prosecutors.

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.

Children and youths

Children are often trafficked to be exploited in criminal activities. Their first encounter then is likely to be with law enforcement and they may be reluctant to disclose the circumstances of their exploitation for fear of reprisal from their traffickers. Prosecutors should be alert then to the circumstances of their arrest and be pro-active in causing enquiries to be made (See [R v O \[2008\] EWCA Crim 2835](#))

Where young people are involved and where there is a credible suspicion that the child or youth might have been trafficked and exploited through criminal activity, then that would generally provide a defence of duress. If new information or evidence supports the fact that the child or youth has been trafficked and has committed the offence whilst in a coerced situation, then there is a strong public interest to stop the prosecution.

However, there must be consideration of whether the criminality is as a direct consequence of their trafficking situation.

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 a leaflet describing the procedure to follow which can be obtained from the local CPS office.

Breaches of The Code of Practice for Victims of Crime should be referred initially to the Crown Prosecution Service 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.

Contact points for the CPS are printed on the back cover of this document.

Conclusion

The CPS is 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 international, national and local 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:

Crown Prosecution Service
Strategy and Policy Directorate
Rose Court
London

e-mail: hqpolicy@cps.gsi.gov.uk

Legislation for cases involving victims of human trafficking

LEGISLATION	OFFENCE
Sexual Offences Act 2003	
<i>Section 57</i>	Trafficking into the UK for sexual exploitation;
<i>Section 58</i>	Trafficking within the UK for sexual exploitation;
<i>Section 59</i>	Trafficking out of the UK for sexual exploitation;
<i>Section 52 and 53</i>	Causing or inciting and controlling prostitution for gain;
<i>Section 53A</i>	Paying for the services of a prostitute subjected to force or exploitation;
<i>Section 1</i>	Rape
<i>Sections 4 – 14</i>	Rape and other offences of causing sexual activity and sexual assault against children u/18.
<i>Section 47</i>	Paying for the sexual services of a child
<i>Section 48</i>	Causing or inciting child prostitution
<i>Section 49</i>	Controlling or arranging child prostitution

<p>Asylum and Immigration (Treatment of Claimants) Act 2004 <i>Section 4(1), (2) and (3)</i></p>	<p>Trafficking into (1), within (2) and out of (3) the UK for exploitation: slavery or forced labour, human organ donation, to provide services or provide another person with benefits</p>
<p>Coroners and Justice Act 2009 <i>Section 71</i></p>	<p>Holding another person in slavery or servitude or requiring them to perform forced or compulsory labour</p>
<p>Immigration Act 1971 <i>Section 25</i></p>	<p>Facilitation of immigration law (smuggling)</p>
<p>Sexual Offences Act 1956 <i>Section 33A</i></p> <p><i>Section 34</i> <i>Sections 35 and 36</i></p>	<p>Managing or assisting in the management of a brothel</p> <p>To let premises for use as a brothel Allowing a tenant to use premises as a brothel or for the purposes of prostitution</p>
<p>Offences against the Persons Act 1861 <i>Section 16</i></p> <p><i>Section 47</i></p> <p><i>Section 20</i></p> <p><i>Section 18</i></p>	<p>Threats to kill</p> <p>Assault occasioning actual bodily harm</p> <p>Unlawful wounding / inflicting grievous bodily harm</p> <p>Unlawful wounding / inflicting grievous bodily harm with intent</p>
<p>Common law</p>	<p>Kidnap False imprisonment Aiding and abetting a criminal offence</p>
<p>Proceeds of Crime Act 2002 <i>Sections 327, 328 and 329</i></p>	<p>Money laundering</p>
<p>Violent Crime Reduction Act 2006 <i>Section 54</i></p>	<p>Forfeiture to seize and forfeit land vehicles, ships and aircraft used for the trafficking of human beings</p>
<p>Abduction Act 1984</p>	

Section 2	Child abduction
-----------	-----------------

International Instruments

The European Convention on Human Rights (ECHR) was incorporated into UK law by the Human Rights Act 1998.
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention on Transnational Organised Crime (Palermo 2000)
The International Labour Organisation (ILO) Conventions No 29 and 182
The Council of Europe Convention on Action Against Trafficking in Human Beings 2005.
Convention Against the Elimination of Discrimination Against Women (CEDAW)
United Nations Convention on the Rights of the Child

Annex B

List of Agencies

The following agencies provide support and / or advice to victims of human trafficking:

11 Million

AFRUCA

Amnesty International UK

Anti-Slavery International

Ashiana, Sheffield

Barnardo's

CARE
City Hearts
Comic Relief
CROP
DePaul Trust
Eaves Housing for Women (POPPY Project)
ECPAT
English Collective of Prostitutes
Hibiscus
Hope for Justice
International Office of Migration (IOM)
Kalayaan
Medaille Trust
Migrant Helpline
National Association of Citizens Advice Bureaux
National Federation of Women's Institutes
National Society for the Prevention of Cruelty to Children (NSPCC)
Red Cross
Refugee Council
Safe and Sound Derby
Salvation Army
Save the Children
Stop the Traffik
Stop UK
TARA
UK Network of Sex Work Projects
UNICEF

Unseen UK

Welsh Women's Aid

GLOSSARY

Adjournment

The postponement of the hearing of a case until a future date.

Appeal

A request for a higher court to change a decision made by a lower court.

Bail

The release of a person held in custody while awaiting trial or appealing against a criminal conviction.

Charge

When a suspect is formally accused of committing a crime.

Civil Proceedings

These are non-criminal proceedings that usually take place in the County or High Court.

Code for Crown Prosecutors

A document that sets out how the CPS makes decisions about cases. It is widely available to the public from any of our offices, and it is on the internet at: www.cps.gov.uk/victims_witnesses/code.html.

Complainant

A person who alleges a crime has been committed against them.

Conviction

A decision a jury that the defendant is guilty.

Cross-examination

Challenging the evidence given by a witness in court.

Crown Court

A court where criminal cases are dealt with by a judge and a jury of twelve members of the public. The cases heard in the Crown Court are those likely to attract higher sentences (for example, human trafficking, rape, and murder).

Defendant

A person charged with a criminal offence.

Evidence

The information given to the court to help make it to make a decision about whether or not a defendant is guilty. 'Evidence-in-chief' is the evidence presented to the court during the examination-in-chief.

Examination-in-chief

The questioning of the witness by the party who called him or her. Prosecution witnesses will be questioned first by the prosecution, before being cross-examined by the defence.

Interpreter

An interpreter is a person specifically trained to help children and adults who cannot speak English or is a Deaf person, to be able to communicate at the police station and at court.

Plea

When a defendant says he or she is guilty or not guilty.

Prosecutor

The person who presents the case against one or more defendants. Prosecutors present cases on behalf of the Crown (in other words, the state) and do not act on behalf of victims.

Re-examination

This involved the questioning of a witness in court by the person who originally called him or her to give evidence. It follows cross-examination.

Special measures

The help for witnesses that a court can offer so that they can give their best evidence in court. They include: live video links, video recorded statements, screens around the witness box, and assistance with communication.

Trial

This occurs after a defendant has entered a not guilty plea or refuses to enter a plea. The judge and jury hear what happened from the prosecution and defence, so that they can make up their minds about whether or not the defendant is guilty.

Victim

A person who has had a crime committed against them.

Witness

A person who can give relevant evidence in a criminal case. This will usually include the victim of a crime.

Witness Care Unit

Run by the police and CPS, Witness Care Units provide help and information for victims and prosecution witnesses.

Crown Prosecution Service
Strategy and Policy Directorate
Rose Court
2 Southwark Bridge
London SE1 9HS
Email: hqpolicy@cps.gsi.gov.uk