



**CPS**

# **A consultation on the CPS Policy for Prosecuting Cases of Human Trafficking**

## **A summary of responses**

**May 2011**

# **A consultation on the CPS Policy for prosecuting cases of human trafficking - A summary of responses**

Response to consultation carried out by the Crown Prosecution Service.  
This information is also available on the CPS website at  
[www.cps.gov.uk](http://www.cps.gov.uk)

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## **Introduction**

This is a summary of the responses to: 'A consultation on the CPS Policy for prosecuting cases of human trafficking'.

It sets out:

- the background to the consultation;
- a summary of the responses;
- a summary of the responses to the specific questions; and
- our conclusions.

Further copies of the summary of responses can be obtained by contacting:

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They may also be obtained by email from:

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Copies are also available on the CPS website – [www.cps.gov.uk](http://www.cps.gov.uk)

## **Background**

In July 2010, the Crown Prosecution Service (CPS) launched a public consultation on its Public Policy Statement on prosecuting cases of human trafficking. The aim of the consultation was to seek a wide range of views on how the CPS handles cases involving victims of human trafficking offences to inform the policy and practice of the CPS in relation to prosecuting cases of human trafficking.

The CPS has responsibility for reviewing cases of human trafficking and applying the Code for Crown Prosecutors to decide whether there should be a prosecution. To assist prosecutors making that decision, we reviewed our policy and practice by consulting publicly and internally. The Public Policy Statement will be a source of reference to prosecutors, as well as providing advice to others on what the CPS does, how human trafficking cases are prosecuted, and what victims can expect from the CPS and the agencies with whom we work. The policy statement is particularly aimed at those who support victims of human trafficking, whether professionally or personally, although it may also be of interest to victims, witnesses and the general public.

An amended version of the document which was the subject of consultation will become the Public Policy Statement on prosecuting cases of human trafficking. The policy statement is published alongside this summary of responses.

As part of the public consultation, respondents were asked to answer six specific questions and to give any additional comments or views at the end of their response. The consultation period closed on 31 October 2010, although a number of responses were received after this date but were given full consideration. All replies have been included in the summary of responses. A list of respondents can be found at Annex A.

## **Summary of responses**

In total there were 41 responses received from 42 respondents. Two organisations submitted a joint response which has been classed as one response for the purposes of this summary. Respondents were divided into the following three categories:

- responses from individuals;
- responses from organisations; and
- responses from criminal justice agencies.

Details of the three categories of respondents are illustrated in Table 1 below.

**Table 1: Table of respondent type**

<b>Summary of Respondents</b>		
<b>Category of Respondents</b>	<b>Number</b>	<b>Percentage of Total</b>
Individual Respondents	1	2
Organisations	31	74
Criminal Justice Agencies	10	24
<b>Total</b>	<b>42</b>	<b>100%</b>

Not every respondent gave specific answers to each individual question in the consultation. Table 2 below shows the total number of responses to each question and the percentage that represents the total number of respondents, irrespective of type.

**Table 2: Table of responses to individual questions as a percentage of the total number of respondents**

<b>Responses to individual questions as a percentage of all respondents</b>		
<b>Question</b>	<b>Number of responses received</b>	<b>Percentage of total number of respondents</b>
1	36	86
2	35	83
3	35	83
4	36	86
5	31	74
6	30	71
7	25	60

Each individual response has been reviewed by CPS Strategy and Policy Directorate. Not all respondents have followed the specific questions posed in the consultation document but the views of the respondents are reflected in the above tables and the detailed analysis of the responses that follows.

## Responses to specific questions

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

There were 36 responses to this question. Of these responses, 19 thought that the aim of the document had been adequately explained. The remaining 17 responses did not express any strong disagreement to the introduction but a number of these provided constructive comments.

Two respondents questioned the readability of the introduction, suggesting that some may not understand certain terms. Another felt that the language was too emotionally charged. One respondent asked if the policy statement will be available in other languages.

Five respondents highlighted the importance of early identification, protection and appropriate support and treatment of trafficked victims. Two in particular thought that the policy statement should recognise this as being the first priority in these cases, rather than placing the focus on the prosecution of the perpetrator. It was felt that this is fundamental in tackling human trafficking, gaining victims' cooperation, and increasing the chances of successful prosecution. The arrangements in place should be clearly presented.

Seven respondents felt that the introduction needs to clearly acknowledge that human trafficking is not gender specific; it also extends to men and boys. One respondent suggested that reference be made to men and women, rather than "vulnerable adults". Many felt that the POPPY project should also be removed as an example of a support agency, as this could indicate that CPS policy is primarily concerned with sexually exploited female trafficked victims. However, one respondent commended the link between human trafficking and the CPS Violence against Women Strategy.

Three respondents noted that sexual exploitation is just one of a variety of purposes for trafficking and two respondents provided further categories of exploitation to which victims can be subject. Another respondent flagged the importance of raising public awareness, ensuring that citizens comprehend the various situations that may fit within the trafficking definition, the types of individuals involved and the impact of these offences upon the victims.

Three respondents noted that the introduction would be strengthened with statistics to provide context and to illustrate the scale of human trafficking in terms of number of victims and profits generated. It would also help to ensure that victims, witnesses and anyone supporting them are fully informed. One respondent thought it would help to manage the expectations of these individuals.

A respondent suggested including information on why there is reluctance from human trafficked victims to come forward.

More explanation was also sought on trafficking within UK borders and outside of the European Union. One respondent specifically wanted detail in relation to the trafficking of British children and another wanted the statement to recognise that young British persons can be trafficked out of the UK. Another considered that the need for international cooperation and importance of intra-EU cooperation should be emphasised.

Five respondents made comments pertaining to the trafficking of children. They requested that the introduction acknowledge the distinct differences where children are concerned and reference them as being particularly vulnerable victims. Two stressed that the statement needs to clearly recognise child trafficking as primarily being a child protection issue. Consent with regard to children should also be briefly mentioned in the introduction.

There were also numerous comments on further points to include here. Four respondents wanted non government organisations (NGOs) to be included in the range of agencies the CPS will work with. Another suggested that contact details for specialist prosecutors be incorporated as an appendix. Two respondents wanted prevention to be flagged as an important means of disruption, whilst another pointed out that the use of confiscation and restraint had been omitted. Finally, one respondent wanted the introduction to reference CPS policy in relation to the prosecution of trafficked victims.

One respondent thought the statement should recognise the distinction between voluntary migration and trafficking into the sex industry.

Another suggested that the document should be explicit as to the importance of police training with the intention to equip them to identify victims of human trafficking.

Whilst many respondents were content that the statement illustrated the CPS' commitment to tackling human trafficking, one respondent suggested that it could be more strongly emphasised as a priority.

## **QUESTION 2: Is the description of trafficking and smuggling legislation explained clearly?**

There were 35 responses to this question. 14 of these were positive, but four did not consider the descriptions of smuggling and/or trafficking to be adequate. Many respondents commented on aspects that had been omitted and made suggestions on how to make the descriptions more comprehensive.

11 respondents stated that the internationally accepted, 'Palermo Protocol', legal definition of human trafficking should be used. Three respondents also suggested that references and hyperlinks to domestic and international

legislation would make this section more robust, including s.71 of the Coroners and Justice Act 2009. Key ECHR judgments (Rantsev v. Cyprus and Russia) could also be referenced.

Three respondents thought that the description of human trafficking as three constituent elements was misleading and implied that all five components listed under “the act” are required for the definition to be satisfied. Two respondents also pointed out that disruption can prevent exploitation from taking place but, provided this is the intention of the trafficker, will not preclude an offence of trafficking. One respondent questioned dependency as a means, whilst another wanted deception included under the opening paragraph.

Two respondents sought clarification on the definition of “debt bondage”.

Five respondents stressed the need to clearly distinguish the ‘special position’ of trafficked children, commenting that “the means” is not required as consent by a child is irrelevant under the Palermo Protocol. Another wanted the statement to better distinguish the differences between child and human trafficking, noting that children are more vulnerable to coercion and deception. It was also stated that children can be abducted, sold by their families or handed over by parents in the belief that they will be educated.

Two respondents were concerned that the list of types of exploitation may appear exhaustive and another that the descriptions of conduct are too rigid. Four advised that forced marriage should also be included in the list, with one respondent noting that, if this does constitute human trafficking, the Forced Marriage Act could be included under the ancillary or additional orders section. It was also noted that the list is applicable to children, who are increasingly being trafficked for criminal enterprises such as cannabis cultivation and begging, although not to the exclusion of adults.

Two respondents wanted the statement to mention that both British and foreign national children can be vulnerable to abuse and sexual exploitation.

The movement of victims between hotels and houses for the purposes of sexual exploitation should also be mentioned. Another advised that unemployment benefit be removed from the bullet point on “enabling others to acquire benefit”.

It was pointed out that homeless men are increasingly being targeted for trafficking into forced labour outside of the UK.

Three respondents questioned the accuracy of the statement that many child victims are unaccompanied asylum-seeking children. This could lead to victims of internal trafficking being overlooked.

One respondent suggested including the applicable penalties for these offences and another thought it would be useful to mention ‘trafficking

indicators'. Examples of what it is and when it takes place would also help to inform public awareness.

It was suggested that a reference to trafficking as being amongst the three most profitable crimes in the world would help to illustrate its extent and severity as a crime. The respondent also considered that it should be recognised as a "form of modern day slavery."

Respondents also commented that both groups and individuals commit trafficking offences and there may be numerous persons or groups involved in facilitating travel and entry. The statement should note that "victims may be passed from person to person and bought and sold more than once in the course of their journey."

Two respondents liked that the policy acknowledged that the distinction between smuggled and trafficked victims can be blurred. However, one considered it misleading to cite exploitation as a distinguishing factor for trafficking, another questioned consent for smuggling. A list of determining factors for smuggling and trafficking was put forward with the suggestion that a table of comparisons could be included in this section to give further clarity.

One respondent advised that the relationship with the smuggler does not always end upon arrival; in some cases the person is held until payment is received. Being subjected to unsafe conditions or sexual or physical abuse in the course of a journey was not considered likely to constitute trafficking by one respondent.

Two respondents were unsure as to what was meant by examining "the end situation". Another respondent wanted to know how CPS procedure differed in cases with elements of both smuggling and trafficking.

Two respondents highlighted that the statement omits any reference to smuggling legislation. It was also pointed out that smuggling cannot be considered a voluntary act for children.

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

There were 35 responses to this question. 13 responses were positive and two were negative. It was the view of some of the remaining respondents that only parts of these sections were clear.

Whilst some were content that a clear and coherent explanation had been provided, others considered the wording too complex, particularly for victims and witnesses. It was suggested that a simplified version of the document

could be produced for this audience or guidance on how to explain the statement could be supplied to support agencies.

Two respondents reiterated that victims should be recognised as the primary concern, rather than the prosecution of perpetrators. It was stated that early identification and support would help to ensure their co-operation.

Two respondents disagreed that there is effective working between the CPS and other agencies. They noted that the practical difficulties of multi-agency working need to be acknowledged and addressed here to enable better co-ordination. It was also felt that the role of voluntary agencies should be noted.

Two respondents queried why the police do not refer every complaint of a criminal offence to the CPS; one advised that this sentence be removed. Another wanted the roles of the police and CPS to be clearly defined. One respondent felt that the statement endorses the tendency of the CPS to defer to the police.

Two respondents said that the Serious Organised Crime Agency will soon form the National Crime Agency and another felt that the Vulnerable Persons Team is wrongly implied as being a separate entity. One respondent thought that it might be helpful to specify who the other prosecuting authorities are and state their remit.

With regard to the decision to prosecute, one respondent felt that the difference in the standard applied by the court at the evidential stage needed to be clarified. Two respondents also thought that more detail could be given around the threshold test; another felt reference should be made to paragraph 3.10 of the Directors Guidance.

A respondent suggested removing some of the text and inserting links to the Code and the legislation, they felt the current level of detail may overwhelm the reader. Similarly, another suggested that The Code be included as an appendix. Examples of when each of the acts could be used and clarification as to the type and standard of evidence required for the offences would also be helpful.

One respondent stated that the wording under the Immigration Act 1971 is misleading in implying that section 25 is not applicable to EU citizens, rather than advising that it refers to facilitating the movement of a non EU citizens. Another wanted the UN definition of Violence Against Women, the Human Rights Act 1998 and the Forced Marriage (Civil Protection) Act 2007 to be inserted.

One respondent felt that the statement on prosecuting on behalf of the public at large demonstrates a negative attitude towards treatment of victims.

Two respondents were concerned that the document doesn't appear to give consideration to the views of the child in the decision to prosecute. The explanation refers only to the views of the victim's family and it was pointed

out that the parent of the victim may have had a part in their trafficking. The child may also be an unaccompanied asylum-seeker, in which instance the views of the Local Authority could be sought.

One respondent thought that a clearer distinction needs to be drawn between the prosecution of adult offenders and child victims who have been coerced into crime by them. They raised concerns that children may not always be acknowledged as victims of trafficking.

One respondent wanted the CPS to consider the likelihood that the trafficker will continue to exploit children should they escape prosecution. Another felt that the statement should give clear acknowledgement to the 'culture of disbelief' surrounding child trafficking.

One respondent felt that the CPS should never take the decision to prosecute child trafficked victims exploited for criminal purposes. It was the opinion of another respondent that a prosecution should not be pursued for any victim where the criminal activity was committed under duress. The policy should confirm that appropriate training will be given to prosecutors.

Clarification was sought as to whether the specialist prosecutors referred to are employed by the CPS.

With regard to public interest, a respondent sought clarification as to the definition of "a significant sentence", listed as a factor for consideration under the public interest test. Another suggested including threat of violence against a victim's family as a factor. Specific examples of when public interest factors might tend against a prosecution would be helpful. Other respondents pointed out that it should be acknowledged that trafficking offences can be carried out by individuals. One respondent also wanted it to be recognised that victims may not always be vulnerable but they may be deceived.

One respondent wanted it to be made clear that, in cases where the decision is made not to prosecute, this does not mean that the victim is not believed. Another wanted the document to note the time limit for the CPS to notify the victim in writing of their decision on whether to prosecute. The letter should provide details on support services if the decision is not to prosecute.

One respondent felt that the document should highlight the importance of CPS liaison with the Home Office when there are pending immigration proceedings. It was felt that the tribunal could consider whether, having assisted the prosecution of a trafficker, the victim would be vulnerable upon return to their country of origin. Another respondent felt that it should be made clear to victims that they may still be removed from the country after participating in a prosecution.

One respondent thought these explanations were vague on the prosecution of cases within the UK.

Finally, it was recommended that the statement mention the input of health professionals in assessing potential harm to victims participating in prosecutions.

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

There were 36 responses to this question. Of these, 15 responses were generally positive. There were two negative responses. Many respondents suggested ways to enhance the explanations provided.

Some respondents acknowledged that the level of detail was sufficient for the purposes of the document, although one suggested that it be supported by separate, more detailed operational guidance.

In terms of case building one respondent thought that the explanation centred on international trafficking and omitted information on building cases of trafficking within the UK. However, another wanted elaboration on the international aspect, including detail on the role of EUROJUST and the 'letter of request'. Emphasising the importance of disrupting organised traffickers across borders was also flagged. This section should also note that some cases are initiated only from abroad after a victim returns to their country of origin. Investigative procedures in another country may also be initiated from the UK in cases where a victim has come to the UK for asylum.

One respondent suggested "case building" be replaced with "prosecutors working with the investigators to ensure that enquiries and evidence is pursued to construct a strong case". Another was positive about the overview provided but felt it should feature earlier in the document.

It was queried whether evidence given to NGOs can be used to build a case, with or without the victims permission.

One respondent wanted it to be made clear that, as far as possible, and in view of the evidence available, prosecutors should opt for charges that reflect the experiences of the victim rather than those with the greatest sentencing potential.

There were several suggestions on how to improve the explanations. Examples included: emphasising the importance of early consultation with an experienced member of the CPS; providing further information on prosecutor obligations; explaining how prosecutors coordinate with specialists; recognising that victims of trafficking may have valid visas.

A number of respondents made comments relating to the early identification, protection and referral of victims through the National Referral Mechanism (NRM); they felt this needs to be adequately captured in the policy as being

paramount. The importance of this should be recognised in terms of securing both their evidence and cooperation which will be instrumental in building a case. It was noted that adults and children can be progressed through the Criminal Justice System without consideration as to their potential status as trafficked victims.

One respondent thought that the statement should make reference to the type of language commonly used by children. This would ensure that their experiences, though not described by them as 'trafficking' and having been 'coerced', would still be acknowledged as coming within the definition of trafficking. They also felt that prosecutors should check and ensure that a detected trafficked child has been referred to the child protection services.

One respondent did not agree that illegal adoption or forced marriage constitutes child trafficking. The section on children should also clearly state that coercion and deception do not need to be evidenced for children.

Six respondents commented upon the reference to the POPPY project as a specialist support provider. As a gender specific project, it is not applicable to all victims and witnesses and it was felt that singling it out may indicate a disregard for male victims, children and other support providers.

One respondent thought that the document could be more explicit as to the type of support and protection provided where victims and witnesses decide to give evidence. There was a concern that a greater expectation of protection could be implied in the statement than could realistically be provided. Another considered that the support available when they do not wish to give evidence should also be explained, including reference to how CPS works with NGOs. A respondent also felt that the possible outcomes for the victim and the types of corresponding support should also be mentioned.

Other comments on how to support victims and witnesses included more detail on pre-familiarisation visits and stating who has responsibility for notifying them of the verdict and sentence. A brief reiteration of reasons for not progressing a case or varying the charge could also be included under 'keeping victims informed'. One respondent felt the document was vague about protection, confidentiality and anonymity of victims.

Five respondents requested further explanation on the NRM, particularly more description on the types of support available. Two also sought clarification on 'first responders' and their role and another wanted information to be included on how the process, protection and entitlement differs for child trafficked victims. One respondent raised concerns that an assessment for a child can be carried out by someone other than a qualified social worker or non child protection specialist. Another respondent asked that the circumstances in which the referral form can be disclosed to the defence be set out. Finally, it was also requested that the NRM section mention that a residence permit may be obtained owing to their personal circumstances.

Also under the NRM, it was advised that the word “extendable” be inserted before “45 day reflection period”. One respondent also felt that this section should reference the CPS role in relation to the NRM.

Many felt that the document could further illustrate why there may be reluctance on part of the victim to participate in criminal proceedings, such as more explanation on the forms of abuses suffered and the impact upon the victim. Another wanted mention made of the fact that traffickers can plant stories in the minds of the victims. One respondent also pointed out that pending immigration proceedings could be a factor in their reluctance.

Acknowledgement in the statement that victims’ experiences of trafficking will vary in accordance with different factors was welcomed. However, two respondents felt that gender should also be included as being influential.

One respondent thought the reference to “boyfriend” in relation to young people and children trafficked for sexual exploitation in the UK, was gendered and implied that only females are subject to this type of exploitation. Another stated that vulnerable adults can also be trafficked in the same way (i.e. house to house, city to city for sexual exploitation).

One respondent suggested that the Crimestoppers phone number be included for the public and victims to report incidences of trafficking. Another respondent felt that details of support agencies and their contact details should also be included.

One respondent requested that the National Crime Recording Standards be referenced or included as an appendix.

Finally, it was suggested that, under the victims and witnesses section, the paragraph on “softer forms of coercion” be re-worded and the devious nature of the trafficker be emphasised.

### **QUESTION 5: Do we show how clearly we deal with children as victims and witnesses and our policy where a child may face charges for offences they are forced to commit whilst in a coerced situation?**

There were 31 responses to this question. 14 respondents considered that, on the whole, the policy statement was clear on this area. One respondent referred to the submission made by another in relation to this question.

Six respondents were of the opinion that the policy on this area was not clear. One respondent considered that the particular issues that relate specifically to children had not been captured in the statement.

It was pointed out that a child engaged in criminal activity may not be identified by the criminal justice system as a trafficked victim and

subsequently, a witness. Another respondent wanted the statement to highlight the duty on prosecutors to take steps to identify trafficked victims and cause enquiries to be made (Re O [2008] EWCA Crim 2834).

The main concern for respondents centred on the coercion element. They interpreted the document as stating that the prosecution may be discontinued if coercion is evidenced. It was felt that some children will not appreciate that they have been coerced or may not understand this term, rendering them unable to satisfy this evidential requirement. Three respondents then went on to consider that, by stating this as the grounds upon which a prosecution will be discontinued, the policy is in conflict with the Palermo Protocol

A number of respondents suggested that, where a child has been identified as a victim of trafficking, they should not be prosecuted, regardless of whether coercion can be proven. It was also the view of two respondents that, when uncovered by police in certain situations, it should be assumed that children are victims of trafficking, committing the crime as a direct result.

Many shared concerns about the criminalisation and subsequent incarceration of child trafficked victims, citing examples of where children have not been identified by the justice system as victims requiring protection.

One respondent, however, did consider that the statement was clear in explaining its approach; that the CPS cannot adopt a policy of non-prosecution in these cases but that it would always look to discontinue where the evidence supports this conclusion.

The following sentence raised concerns: "Prosecutors will think carefully about the effect on a child before making the decision to prosecute, but if the crime is serious enough and the evidence is strong enough, the CPS will nearly always prosecute." Respondents were also confused as to whether this referred to the prosecution of children or their traffickers.

Two respondents suggested that, for clarity, the explanation relating to the decision to prosecute children who have committed offences should be separated from the discussion on children as victims.

It was reiterated that there needs to be a clear recognition by the statement that trafficking is first and foremost a child protection issue. One respondent wanted it to be stated that this necessitates that the interests of the child be factored into all decisions regarding them and risk assessments be carried out.

It was suggested that citing the reasons why children are particularly vulnerable would enhance the section on child trafficking.

One respondent also noted that the document should recognise the difficulties suffered by child victims in disclosing their experiences. It was suggested that prosecutions involving trafficking offences could be delayed to allow time for child victims to reveal the details of their abuse.

One respondent commented that trafficked children should be treated in the same manner as children who are victims of offences under the Sexual Offences Act 2003. That is, as victims of abuse who should be referred to the child protection services. Another made similar comments in relation to forced prostitution, requesting that the wording at page 23 under 'when to prosecute' be amended to reflect this. A respondent noted the term prostitution should be replaced with 'sexually exploited' when referring to persons under 18.

One respondent wanted further explanation on how the CPS assists children in giving evidence, another specifically in relation to court familiarisation. However two thought that this had been set out well in the statement.

With regard to identifying the age of the victim, one respondent welcomed that the document set out the protocol in the event of an age dispute. Two others commented on the difficulty that can arise when there is a difference in age as determined by the court and separately by the local authority; prosecutors should therefore be advised to notify the court of any age assessment carried out by the local authority.

One respondent suggested that it would be helpful to have specialist prosecutors who have the knowledge and skills to effectively communicate with children and deal with child cases.

It was advised that the policy acknowledge that women can also be exploiters, acting as a carer or friend of the child.

One respondent felt that the family of the child victim/witness should be mentioned and acknowledged as secondary victims.

Two respondents considered the domestic servitude section to be gender biased towards women, detracting from young men and children.

Two respondents also commented that the document doesn't provide information on how to engage with support agencies for children and young men.

Two respondents commented that there is over representation of young people in the care of local authorities that are sexually exploited. Another respondent also wanted mention made of the very real risk of trafficked children going missing.

Further comments to note: there is no reference to trafficking for the purposes of benefit fraud; the term 'internal trafficking' is wrongly coined, causing an unhelpful distinction between UK victims moved to the place of abuse and those who have not; intermediaries have been omitted from the special measures section; the Welsh Assembly Government guidance should also be referred to.

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

There were 30 responses to this question. The majority of responses were positive overall. Six respondents requested further information on means of disrupting traffickers.

One respondent was negative about the role of prosecutors as they were concerned by the policies and practices outlined in the policy. They considered that prosecutors should undertake regular case reviews and put the victim at the forefront of all case based decision making, including plea and sentencing.

Two respondents noted that, whilst a defendant may offer guilty pleas to charges carrying greater sentencing potential than human trafficking offences, to pursue these rather than trafficking related charges may do a disservice to victims and those who work to support them. One respondent viewed that the victim should be consulted before accepting a guilty plea in such instances.

Two respondents felt that the statement should mention the need to consider victims interests when making compensation and confiscation orders. One referenced section 301 of the Proceeds of Crime Act 2002 (POCA) in relation to cash seizure and forfeiture. It was stated that, by having regard to this provision, prosecutors can consider whether a portion of the trafficker's profits belongs to the victim and whether any compensation claim could also be paid from the confiscated assets (section 13(6) POCA).

Another respondent wanted the document to clarify who will inform victims of the option to make compensation applications and the timing of this. Further explanation was also sought on issues associated with seeking and securing pre-trial Criminal Injuries Compensation.

Two respondents suggested that Serious Crime Prevention Orders should be included under ancillary or additional orders.

The document was considered unclear as to why certain human trafficking offences cannot be referred to the Court of Appeal in the event of an unduly lenient sentence.

Three respondents made comments on the section 'prosecuting suspects who might be trafficked victims'. One questioned whether there is enough evidence to make reference in the policy that children are trafficked for cannabis cultivation. Another wanted the statement to note that sexually exploited boys and young men may be required to coax other victims into sexual exploitation as a result of their situation. This can mislead authorities into wrongly categorising them as offenders rather than victims. It was also suggested that this section should feature earlier in the document.

Two respondents stated that young persons who appear as witnesses to sexual exploitation may actually be victims themselves who have not disclosed their own abuse.

There were conflicting views on the 'other means of disrupting trafficking' section. One respondent was of the view that the right level of detail had been presented on this area, whilst others felt that it could be further developed, seeking further explanation and clarification on the means. One in particular wanted more information in relation to disrupting internal trafficking and trafficking from outside of the EU.

Another respondent felt that this section could be bolstered by emphasising the importance of developing international cooperation with the view to disrupting larger networks.

One respondent stated that this part of the policy should recognise the clear link between prostitution, trafficking for sexual exploitation and organised crime, and that disruption will come from invoking 'credible' legislation to target purchasers, advertisers and facilitators. Namely, those who support and profit from the sex industry.

One respondent suggested hyperlinks could be included in the section relating to disruption.

Another respondent considered that the statement was not informative as to the international facets of trafficking and further clarification could be provided. Another considered that it would be useful to include a description of traffickers and how they operate.

## **QUESTION 7: Any other comments about the document?**

There were 25 responses to this question.

Seven respondents welcomed the policy statement and provided positive comments regarding its clear, concise and effective format. One respondent commended the CPS for taking a definitive view on this area and acknowledging the need to bring those that commit trafficking crimes to justice.

Many of the comments reiterated views that had been expressed throughout the document. For example, the view that a multi-agency approach is required to counter human trafficking was re-inforced. Also, the need to recognise that men and young boys are also victims of trafficking.

Similarly, It was again suggested that specific support groups, such as POPPY, should not be singled out for reference in the main document to avoid gender bias and disparaging the work of other projects and agencies.

Two respondents noted further support agencies to be included at Annex B: UK Network of Sex Work projects and National Working Group for sexually exploited children & young children.

Kalayaan was noted by one respondent as the non government organisation providing support for victims of domestic servitude, although another considered that their remit is advice to migrant domestic workers who have legally entered the UK.

It was reiterated that the statement should clarify how the CPS works to disrupt trafficking networks within the UK and outside of the EU. A view was also expressed that the statement is vague in relation to trafficking by less organised criminal networks.

One respondent wanted it to be made clear that the UK Human Trafficking Centre is part of the Serious Organised Crime Agency and requested that the role of the UKHTC be made clear. The respondent added that contact details for the UKHTC and the NRM should also be included.

One respondent stressed the importance of prosecutor familiarisation and training in line with the policy statement. Another suggested that it might also be useful for medical staff to be aware of the document so that they can detect potential victims of trafficking during the course of their work.

It was also advised that a corresponding local agreement will be required to support the statement e.g. containing details of specialist prosecutors. Another would like practical advice to be included in the document, such as the role of the support agency in assisting a victim in the court process.

One respondent disputed that victims of forced labour and domestic servitude would “consider their situation here to be far superior to that offered in their country of origin”. Another wanted further detail on the area of forced labour and domestic servitude, and stressed that the key defining criterion for this type of exploitation is the element of involuntariness rather than the form of activity being carried out by the victim. It was also noted that this type of exploitation occurs both formally and informally.

Another respondent flagged that forced labour is defined by work that is “(a) exacted under the menace of any penalty, which is (b) performed against the will of the person concerned.” They considered that the statement wrongly indicated low wages and poor working conditions as the defining criteria. They also disputed the statement put forward in the document that there is less awareness and understanding of trafficking for forced labour.

One respondent suggested that the document outline factors that may indicate a situation of forced labour.

One respondent was of the view that, in line with the intent of section 71 of the Coroners and Justice Act 2009, prosecutions should not be pursued for

victims of forced labour. The view was that to do so otherwise would conflict with parliamentary intention in passing this legislation.

Further suggestions were provided on how to enhance the document. These included mentioning of the role of the employment tribunal in providing remedies and by inserting links to support organisations.

It was thought that the statement wrongly suggests that most legal migrants are at particular risk of trafficking.

A number of comments were given by one respondent on the 'what is human trafficking' section. Namely: "Is organ removal still considered to be trafficking?"; noting that the term slavery is "incredibly generic and surely encompasses all of the other forms of trafficking listed"; for the purposes of continuity, they advised one term should be used to refer to the trafficker (rather than alternating between this and other terms such as 'controller')

Two respondents wanted the document to state that human trafficking is an abuse of human rights.

Clarification was sought in relation to the following sentence: "There must be consideration of the extent to which the victim was compelled to undertake the unlawful activity". They queried how this is determined. What was meant by criminality "as a direct consequence of the trafficking situation" was also raised.

It should be acknowledged that sexually exploited children and young people are often moved across multiple towns and cities.

It was also felt that the importance of compensation could be stressed to prosecutors, noting that these can operate in a varied capacity; punitive, deterrent and preventative.

The importance of awareness and prevention was stressed by one respondent, who stated that large sporting events can be a catalyst for trafficking, creating demand for trafficked women. This should be an important consideration in the planning for such events.

In relation to the section on prosecuting suspects who might be trafficked victims, one respondent requested explanation as to how evidence of exploitation or trafficking of children would be gathered and how this will be designated as a credible defence of duress. They noted the guidance issued by the Association of Chief Police Officers (March 2010).

One respondent considered that, in view of the relatively low number of cases, nail bars should not be referenced as a place of exploitation.

One respondent queried the position in Northern Ireland. (N.B. This document is not applicable to Northern Ireland. The Public Prosecution Service for Northern Ireland is intending to draft a similar statement).

One respondent expressed the view that trafficked victims operating under duress should not be prosecuted and “strongly advises the CPS to implement measures which will ensure that the prosecution of trafficking victims ceases in the UK”.

## **Conclusion**

The CPS is grateful to all those who responded to the consultation and the time that they have invested in doing so. We have carefully considered all the responses we received, and have taken them into account when considering whether to revise the statement. The changes will now be reflected in the the Public Policy Statement.

The CPS is committed to ensuring that our prosecuting policy enables our prosecutors to reach the correct charging decisions not only in line with current law, but also, where it is just and lawful to do so, taking into account the particular need to consider the elements of risk to and safety of victims and witnesses. This will ensure the CPS has a policy in which victims, witnesses and the public at large can continue to have confidence.

## **Consultation Criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation and best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**These criteria must be reproduced within all consultation documents.**

## **Annex A**

### **Response to consultation**

#### **Individual Respondents**

Alan Thompson

#### **Organisations**

NSPCC

Immigration Law Practitioners' Association

Anti-Trafficking Legal Project

Oxford City Council

Anti-Slavery International

ECPAT UK

Office of the Children's Commissioner for England

Office of the Children's Commissioner for Wales

Migrant Help

REACH

SOVA

International Centre for the Study of Sexually  
Exploited & Trafficked Young People

Unseen (UK)

Gangmasters Licensing Authority

Coalition for the Removal of pimping (CROP)

STOP UK

UK Network of Sex Work Projects

Welsh Women's Aid

Department of Health (Violence, Social Exclusion  
and Military Health Team)

Stop the Traffik

Boys & Young Men Forum

Safe & Sound Derby

National Working Group

The Nottinghamshire Domestic Violence Forum

Hope for Justice

Barnado's

London School of Hygiene & Tropical Medicine

Kalayaan

CARE

TARA Project

CEOP

## **Criminal Justice Agencies**

Cambridge Constabulary
CPS Lancashire - Community Involvement Panel
Gwent Police
CPS West Yorkshire
Kent Police
Thames Valley Police
Greater Manchester Police
Serious Organised Crime Agency
CPS Essex
Home Office (Organised Crime Compliance Team, UKBA)

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