



**Public
Prosecution
Service**

Public Prosecution Service for Northern Ireland

Policy for Prosecuting Cases of Modern Slavery and Human Trafficking

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Independent, Fair and Effective

FURTHER INFORMATION

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Policy for Prosecuting Cases of Modern Slavery and Human Trafficking

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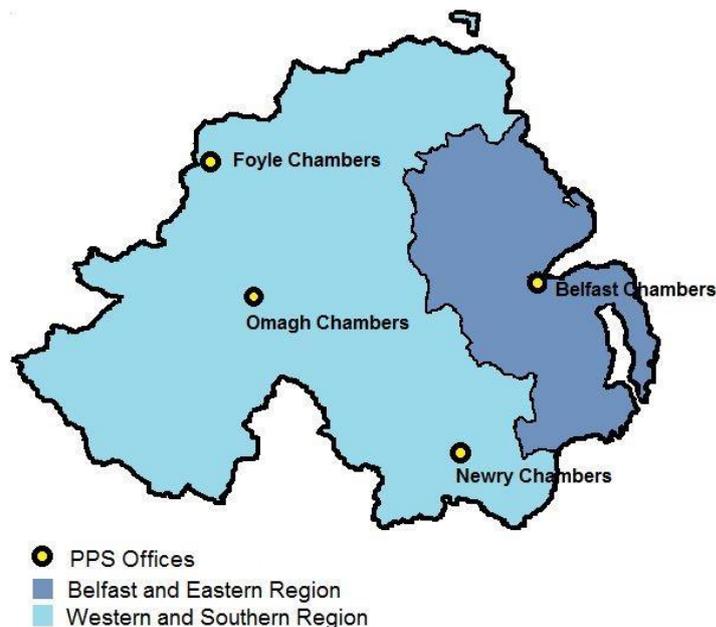
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About the Public Prosecution Service

The PPS, which is headed by the Director of Public Prosecutions, is the principal prosecuting authority in Northern Ireland. In addition to taking decisions as to prosecution in cases investigated by the police, it also considers cases investigated by other statutory authorities, such as HM Revenue and Customs.

While the PPS works closely with the police and other agencies, it is wholly independent; its decisions are impartial, based on an independent and professional assessment of the available evidence and the public interest. The PPS vision is to be recognised as providing a first class prosecution service for the people of Northern Ireland.



The PPS is a regionally based organisation (see map above). There are two regions, both headed by an Assistant Director. The Assistant Director has overall responsibility for decisions as to prosecution and for the conduct of all prosecutions in that region, with the exception of those cases which are considered by prosecutors at Headquarters in Belfast.

There are also a number of other sections within the Service, each headed by an Assistant Director, which deal with specialised areas of work. These include High Court and International, Fraud and Departmental, Central Casework and the Serious Crime Unit.

Contact details for the PPS regional offices, as well as a number of other stakeholders and support organisations, are provided at **Annex A**.

1. Introduction

1.1 Purpose of this policy

- 1.1.1 The purpose of this policy is to explain the approach of the Public Prosecution Service (PPS) in taking prosecutorial decisions in respect of offences arising from modern slavery and human trafficking and the wide range of other crimes associated with it such as benefit fraud, grievous bodily harm, assault, rape or child sex abuse¹. Victims are among the most vulnerable people in society and could be hesitant to seek help due to fear of, and control by, their traffickers
- 1.1.2 Modern Slavery Human Trafficking² is an umbrella term that covers the offences of human trafficking and slavery, servitude and forced or compulsory labour. The acronym MSHT has been used throughout to refer to these offences.
- 1.1.3 It is intended that this policy will also provide practical and legal guidance to prosecutors dealing with cases of modern slavery and human trafficking.
- 1.1.4 Modern slavery and human trafficking have been described as complex global crimes. They are serious crimes which demean the value of human life. Trafficking is a form of modern day slavery, whether it is for labour, sexual or other forms of exploitation. It involves the recruitment and movement of adults and children to exploit them in degrading situations for financial reward for their traffickers.
- 1.1.5 Trafficking often takes place across international borders but it can also happen within domestic jurisdictions to both foreign nationals and UK citizens. Criminal Justice Inspection Northern Ireland's Report 'Modern Slavery and Human Trafficking'³ described the victims of these crimes as *"...hidden in plain sight, although many victims could be working in the public eye and visible in the community in a range of places such as car washes, nail bars, construction sites, the agricultural sector and in the sex industry."* These crimes not only have a devastating impact on the individuals that are trafficked but also their families, causing traumatic suffering to the victims and to the fabric of society as a whole.

¹ Annex B provides a comprehensive list of potential offences. This list is not exhaustive but should help to provide an overview of what might be prosecuted alongside MSHT offences.

² 2017 UK Annual Report on Modern Slavery.

³ Criminal Justice Inspection NI Report – Modern Slavery and Human Trafficking, October 2020.

- 1.1.6 The Blue Blindfold⁴ campaign, 'Don't close your eyes to Human Trafficking', sets out a range of indicators of human trafficking. It is part of a wider initiative of the international fight against MSHT.
- 1.1.7 One of the most effective ways of combating MSHT is through the pursuit and disruption of offenders, which includes prosecution. PPS is committed to reducing harm caused through the prosecution of those responsible where the Test for Prosecution is met (see below).

1.2 PPS Code for Prosecutors

- 1.2.1 This policy should be read in conjunction with the PPS Code for Prosecutors and other PPS policies, including the PPS Victim and Witness Policy.
- 1.2.2 The Code sets out the general principles to be applied in decision-making and outlines in detail the Test for Prosecution, as well as guidelines for the conduct of criminal prosecutions and other information about what we do and how we work.
- 1.2.3 Prosecutions are initiated or continued by the PPS only where it is satisfied that the Test for Prosecution is met. This is a two stage test as follows:
- (1) the Evidential Test – the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction; and
 - (2) the Public Interest Test – prosecution is required in the public interest.
- 1.2.4 The Public Prosecutor must analyse and evaluate all the material submitted in a thorough and critical manner. The Evidential Test must be passed before the Public Interest Test is considered. Each of these stages must be considered separately and passed before a decision to prosecute can be taken.
- 1.2.5 The Code for Prosecutors, along with other PPS publications, is available on the PPS website at www.ppsni.gov.uk, or a hard copy can be obtained by contacting PPS directly.

1.3 Commitment to victims and witnesses

- 1.3.1 The PPS recognises that the provision of services and support for victims and witnesses, and ensuring their needs are met, is essential to the overall

⁴ <https://www.blueblindfold.ie/>

effectiveness of the criminal justice system. Being the subject of, or witnessing a crime, is often a traumatic experience. It is vital, therefore, that victims and witnesses are given the support, information and services they need to minimise the disruption and upset caused to them, while enabling them to give the best possible evidence.

- 1.3.2 The PPS Victim and Witness Policy explains in full the range and standards of service that victims and witnesses will receive from the prosecution service.
- 1.3.3 It is recognised that some victims may be reluctant to tell police or authorities what has happened to them. They may be apprehensive or frightened about coming to court to give their evidence or find it difficult to understand the legal process. Many victims are concerned about the consequences of giving evidence and may be reluctant to support criminal proceedings. They may, for example, fear risk of harm to themselves or their family members. Some victims may fear that exposing what has happened to them, to their family or their community, could lead to social isolation or even honour-based violence.
- 1.3.4 Fear and mistrust of authorities can be a significant barrier for some victims who may have experienced corruption in their country of origin, poor responses to previous reports of violence or possibly violence inflicted by authorities. Fear of immigration authorities may also be a major concern for victims especially if their immigration status has not been confirmed.
- 1.3.5 Female victims may be reluctant to report offences as their experience of discrimination in their home country may lead to them to assume that the authorities here will not believe them or will blame them. Male victims of sexual exploitation may be particularly reluctant to disclose what has happened to them due to a fear of being stereotyped. Lesbian, Gay, Bisexual or Transgender victims may have experienced violence or threats of death in their home country. Victims with a disability may have experienced discrimination or even violence in their home county due to their disability and may therefore mistrust authorities or fear that their report will not be taken seriously. These fears are often used by traffickers to manipulate victims in order to prevent them disclosing information to police, supporting prosecutions and accessing services.
- 1.3.6 The complexity of MSHT cases can result in the victim being involved in a number of different legal processes which may take place parallel or subsequent to any criminal proceedings, for example, the National Referral

Mechanism⁵ (NRM) determination process or an asylum claim. The PPS recognises that this has significant implications for victims who may be required to provide information to a number of authorities with the resultant risk of them being re-traumatised. Prosecutors will be aware of this impact and the need therefore for effective communication with the victim and their legal representative, if one has been instructed, and any other agencies that may be involved with the victim.

- 1.3.7 It is therefore essential that victims of MSHT are afforded the necessary protection, support and treatment to assist them in participating in criminal proceedings and in the prosecution process.
- 1.3.8 The PPS will consider the range of legal measures available to support and protect these victims and will make appropriate applications to the court to enable victims to give their best evidence. When necessary the PPS will also ensure that an appropriate interpreter or translator is provided to enable victims to give evidence at court, to translate correspondence or to interpret for a victim at any meetings with the prosecutor. More information on the measures which can be applied for at court to assist victims and witnesses and on the provision of interpreters is provided for in the PPS Victim and Witness Policy.⁶
- 1.3.9 The United Nations Convention on the Rights of the Child⁷ recognises that children have the right to be protected from abuse or exploitation. Article 3 of the Convention states: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*
- 1.3.10 Child victims of trafficking will need extra support and are likely to be in need of welfare services and, in many cases, safeguarding. Although the main responsibility for children’s welfare and safety will usually lie with other agencies such as social services or health and education services, the PPS will positively engage with other authorities and agencies to support the appropriate safeguarding of children through the prosecutorial process.
- 1.3.11 The PPS is committed to working with agencies, both statutory and voluntary, to provide victims and witnesses with appropriate protection and support to ensure their safety, thereby enabling them to support a prosecution. A list of agencies that support trafficked victims is available at

⁵ The National Referral Mechanism (NRM) assists in identifying whether a person is a victim of human trafficking (see section 3.4).

⁶ <http://www.ppsni.gov.uk/publications/victim-and-witness-policy>.

⁷ [Article 3//www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

Annex A. Further information on victims and witnesses is set out at Chapter 3.

1.4 Working with others

- 1.4.1 The PPS recognises the need for a multi-agency response to the challenges of dealing with human trafficking. The PPS works with the police, the Organised Crime Task Force⁸ (OCTF), other agencies in the criminal justice system and the voluntary sector in identifying ways to increase disruption, prevention, investigation and prosecution, as well as improving victim and witness care and protection. It is recognised that non-governmental organisations will often have greater experience of victims and their differing needs and that 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.
- 1.4.2 The PPS is a key member of the OCTF MSHT Sub-Group. This is a forum which brings together government, law and enforcement and a range of agencies together to set priorities for tackling organised crime in Northern Ireland, including Human Trafficking. The Human Trafficking Sub Group includes representatives from the Police Service of Northern Ireland (PSNI), the Health and Social Care Board (HSCB), the Department of Justice (DoJ), the Department for Communities, (DfC), National Crime Agency (NCA), UK Border Force, Home Office, Gangmasters & Labour Abuse Authority (GLAA) and An Garda Síochána (AGS).
- 1.4.3 The PPS also assists the Department of Justice and cooperates with agencies and organisations that are responsible for monitoring the UK's compliance, for example GRETA – the Group of Experts on Action against Trafficking in Human Beings and the Anti-Trafficking Monitoring Group.
- 1.4.4 Given the inter-jurisdictional aspect of human trafficking the PPS will continue to work closely when required, with the Crown Prosecution Service in England and Wales and the Office of the Procurator Fiscal in Scotland, as well as obtaining information, when required, from enforcement agencies in other countries. The PPS is represented on the UK Prosecutors Forum. This provides a valuable source of legal and prosecutorial information sharing. It is also extremely useful in the sharing and exchanging of key developments in this area.
- 1.4.5 It is also recognised that the land border between Northern Ireland and the Republic of Ireland is unique in the UK. The PPS has developed close

⁸ [Organised crime | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/organised-crime)

working relationships, through various fora, with An Garda Siochana, Department of Justice and Equality and with the Office of Director of Public Prosecutions, Ireland. The PPS is represented on the North South Victims Project Advisory Group. One of the key strategies for the agreed workplan centres on the area of MSHT.

- 1.4.6 These cases often result in working with prosecutors and law enforcement in other jurisdictions. This has been successfully achieved through use of the JIT⁹ process in cooperation with Eurojust.¹⁰
- 1.4.7 Human trafficking, slavery, servitude and forced or compulsory labour are clear violations of human rights law. The full range of international standards can be found at Annex B.

⁹ A JIT (Joint International Team) is an international cooperation tool based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more States, established for a limited duration and for a specific purpose, to carry out criminal investigations in order or more of the involved States.

¹⁰ Eurojust is an agency of the European Union (EU) dealing with judicial cooperation in criminal matters among agencies of the member states. It is seated in The Hague, Netherlands.

2. Modern Slavery Human Trafficking: Guidance

2.1 What is Modern Slavery Human Trafficking?

2.1.1 The Palermo Protocol¹¹ and the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the Convention) describe trafficking as:

“...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 the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having the control over another person, for the purpose of exploitation”.

2.1.2 Exploitation is defined as including *“...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 the removal of organs”.*

2.1.3 The Convention further states that the consent of a victim of human trafficking to the intended exploitation shall be irrelevant where any of the means set out above have been used.

2.1.4 The Convention provides that **human trafficking has three constituent elements:**

- **The Act (What is done)** - recruitment, transport, transfer, harbouring and receipt of persons.
- **The Means (How it is done)** - threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability and giving payments or benefits.
- **The Purpose (Why it is done)** - for the purpose of exploitation, including: prostitution of others, sexual exploitation, forced labour, slavery or similar practices, removal of organs and other types of exploitation.

¹¹ The Palermo Protocols are made up of three Protocols including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention Against Transnational Organised Crime. The Palermo Protocols were adopted by the United Nations in 2000 in Palermo, Italy, and ratified by the UK on 9 February 2006.

- 2.1.5 In relation to child victims, the Convention provides that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in human beings’ even if it does not include the means referred to above. A child cannot consent to their trafficking and cannot consent to their exploitation and therefore any child moved or recruited into or through a country for the purposes of exploitation is a victim of human trafficking. The Convention provides that a child is a person under the age of eighteen years.
- 2.1.6 Not all MSHT involves an international dimension: it could be locally-based.¹² NI born citizens and UK born citizens can also be at risk. Those particularly vulnerable members of society are at greater risk such as, for example, persons that are homeless or in financial difficulties, individuals with learning disabilities or persons struggling with addiction issues. Human trafficking may often be considered to be part of organised crime that operates on a large commercial scale and covers a range of criminal activity. However, it can also be committed on a lesser scale by an individual who may be known by or actually related to the victim or who may be in a position of trust.
- 2.1.7 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. They may be totally dependent on those who are exploiting them due to age, disability or another vulnerability. In some cases traffickers may use the threat of cultural practices such as Juju¹³ or Voodoo as a means of controlling and silencing victims.
- 2.1.8 In Northern Ireland, prior to the commencement of the Human Trafficking and Exploitation (Criminal Justice) and Support for Victims) Act (Northern Ireland) 2015 (HTA 2015), the main offences relating to human trafficking were contained in the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. The applicable legislation will therefore depend on when the trafficking offences took place.
- 2.1.9 The main offences relating to human trafficking are set out in sections 2.2 and 2.3 below.

¹² *Criminal Justice Inspection Northern Ireland Report ‘Modern Slavery and Human Trafficking’ (2020).*

¹³ *Modern Slavery – A Global Perspective, Siddharth Kara (2017).*

2.2 Offences committed prior to 13 January 2015

The Sexual Offences Act 2003

2.2.1 Sections 57, 58, 58A and 59 create offences of trafficking for the purpose of sexual exploitation. These sections provide that a person commits an offence if that person intentionally:

- arranges or facilitates the arrival or entry of another person into the UK (section 57);
- arranges or facilitates their travel within the UK (section 58);
- arranges or facilitates their travel outside the UK (section 58A); or
- arranges or facilitates their departure out of the UK (section 59),

with the intention of committing a relevant sexual offence¹⁴ on that person or with the belief that another person is likely to commit a relevant sexual offence on that person.

The Asylum and Immigration (Treatment of Claimants etc.) Act 2004

2.2.2 Section 4 creates offences of trafficking for exploitation other than sexual exploitation. The section provides that a person commits an offence if that person intentionally:

- arranges or facilitates the arrival or entry of another person into the UK (section 4(1));
- arranges or facilitates their travel within the UK (section 4(2));
- arranges or facilitates their departure out of the UK (section 4(3)); or
- arranges or facilitates their travel outside the UK (section 4(3A))

with the intention of exploiting them or with the belief that another person is likely to exploit them.

2.3 Offences Committed on or after 13 January 2015

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (HTA 2015)

2.3.1 Sections 1 to 4 establish new offences of human trafficking and slavery, servitude and forced or compulsory labour.

¹⁴ 'Relevant Offence' means: an offence under Part 1 of the Sexual Offences Act 2003, an offence under section 1(1)(a) of the Protection of Children Act 1978, an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008 and an offence listed in Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

2.3.2 Sections 1 to 3 replace the previous offences of human trafficking under sections 57 to 59 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and of slavery, servitude and forced or compulsory labour under section 71 of the Coroners and Justice Act 2009, which are repealed in Schedule 5.

Section 1: Slavery, servitude and forced or compulsory labour

2.3.3 1.—(1) A person (“A”) commits an offence if:-

(a) A holds another person (“B”) in slavery or servitude and the circumstances are such that A knows or ought to know that B is held in slavery or servitude, OR

(b) A requires B to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that B is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding B in slavery or servitude or requiring B to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.¹⁵

(3) In determining whether B is being held in slavery or servitude or required to perform forced or compulsory labour regard may be had to all the circumstances.

(4) In particular, regard may be had to any of B’s personal circumstances which may make B more vulnerable than other persons such as, for example:-

(a) that B is a child or a vulnerable adult; or

(b) that A is a member of B’s family.

(5) The consent of B to any act which forms part of an offence under this section is irrelevant.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for life.

¹⁵ https://www.echr.coe.int/Documents/Convention_ENG.pdf.

Sections 2 and 3: Human Trafficking

2.3.4 Section 2 creates the consolidated offence of human trafficking for any type of exploitation as defined in section 3. Section 2(1) of the Act states that:

A person (“A”) commits an offence if (“A”) arranges or facilitates the travel of another person (“B”) with a view to (“B”) being exploited.

Section 2(2) of the Act states that:-

(“A”) may in particular arrange or facilitate (“B”)’s travel by recruiting (“B”), transporting or transferring (“B”), harbouring or receiving (“B”), or transferring or exchanging control over (“B”)

The exploitation includes sexual and non-sexual exploitation. It includes: slavery, servitude and forced or compulsory labour, sexual exploitation, removal of organs, securing services etc. by force, threats or deception, including providing another with benefits of any kind or enabling another to acquire benefit of any kind (“benefits” includes the proceeds of forced begging or of criminal activities) and securing services etc. from children and vulnerable persons.

2.3.5 The section provides that a person commits an offence if they arrange or facilitate the travel of another person into, out of or within any country, with a view to that other person being exploited; i.e. that they themselves intend to exploit the other person or that they know, or ought to know that another person is likely to exploit them.

2.3.6 They may in particular arrange or facilitate another’s travel by recruiting the other person, transporting or transferring them, harbouring or receiving them, or transferring or exchanging control over them.

2.3.7 The section makes clear that the consent of being exploited to any act which forms part of an offence under the section is irrelevant.

2.3.8 All of the above offences refer to criminal acts committed in the UK, regardless of the nationality of the defendant, as well as acts committed overseas. This means that if someone who resides outside the UK arranges or facilitates travel of a person within, or out of the UK, knowing or believing that they will be exploited, it is possible where the Test for Prosecution is met, to prosecute that person for offences of human trafficking.

2.3.9 Additionally if a UK citizen or a person who at the time of the offence was habitually resident in Northern Ireland or a body incorporated under the law of a part of the UK arranges or facilitates travel of a person into, within or out of a country anywhere else in the world, knowing or believing that they will

be exploited, it is possible where the Test for Prosecution is met, to prosecute that person for offences of human trafficking.

- 2.3.10 It is also an offence to attempt to commit a trafficking offence, to participate as an accomplice in a trafficking offence or to organise or direct others to commit a trafficking offence.
- 2.3.11 Article 64A of the Sexual Offences (Northern Ireland) Order 2008 (as amended by section 15 of the HTA 2015) introduced the offence of paying a person for sexual services. The Criminal Justice Inspection Report¹⁶ (Modern Slavery Human Trafficking) at Paragraph 1.23 stated that “...*there was no doubt that there was an indisputable link between demand for prostituted sex and human trafficking*”.

2.4 Types of exploitation

- 2.4.1 The types of exploitation are wide-ranging¹⁷, often linked, and can include the following:

Slavery and servitude

- 2.4.2 Slavery is described as the status or condition of a person over whom any or all of the powers attaching the right of ownership are exercised. In essence, characteristics of ownership need to be present for a state of slavery to exist.
- 2.4.3 Servitude is a linked but much broader term than slavery. In *Siliadin v France* [2005] EHRLR 660 the European Court of Human Rights reaffirmed that servitude “...*prohibits a particularly serious form of denial of freedom. It includes, in addition to the obligation to provide certain services to another, the obligation to live on the other's property and the impossibility of changing his/her status*”.
- 2.4.4 Victims of slavery and/or servitude regularly suffer sexual and physical abuse and can be utilised by their ‘owner’ for any form of exploitation.

Sexual Exploitation

- 2.4.5 Sexual Exploitation is defined in section 3(3) of the HTA 2015 as something that is done to or in respect of the person which involves the commission of an offence under any provision of the Sexual Offences (NI) Order 2008 – to include prostitution offences.

¹⁶ [CJINI - Criminal Justice Inspection Northern Ireland - Modern Slavery and Human Trafficking](#).

¹⁷ See also Annex C – Typology outlining the different types of Modern Slavery offences in the UK.

- 2.4.6 Through the act of prostitution, victims are placed into brothels or forced to work on the streets. Victims are forced to provide sexual services to many individuals and receive little or no money. They regularly suffer sexual and physical violence and abuse. Whilst it predominantly affects women, young girls, boys and men can also be the victims of sexual exploitation. Sexual exploitation can also occur within debt bondage. Victims are trapped in prostitution through the use of unlawful 'debt' purportedly incurred, for example for their transportation or recruitment which exploiters insist they must pay off before they can be free. Victims may also be sold from one exploiter to another.
- 2.4.7 Another method of sexual exploitation that can be used relates to the so-called 'Loverboy' criminal network. This has recently been investigated as part of a Eurojust¹⁸ joint action in the UK and Romania. The human traffickers usually operate by trying to make young girls or boys fall in love with them. This is done through acts of deception and manipulation and can be in person or by use of social media; or both. Once the victims are under their influence, the exploitation begins and the victims can then be trafficked into the sex industry.

Forced or compulsory labour

- 2.4.8 Trafficking for forced or compulsory labour covers a wide spectrum of exploitative situations. Such situations range from those who have been locked up or severely restricted in their freedom of movement, and physically and/or 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. This may involve being forced to work very long hours and hand over any wages they may earn to their traffickers or controllers. Violence and threats are used against victims or against their families in their home country if they fail to comply. Threats are sometimes made to expose the worker to the authorities, for example, because of the worker's immigration status. Where they hold a passport this is often confiscated thus restricting their movements. Many victims are also in debt bondage.
- 2.4.9 The International Labour Organisation¹⁹ (ILO) has suggested that factors which may indicate forced labour include:
- threats or actual physical harm;

¹⁸ <https://www.eurojust.europa.eu/romania-and-uk-judicial-authorities-jointly-dismantle-loverboy-criminal-network-specialized>

¹⁹ https://www.ilo.org/wcmsp5/groups/public/--ed_norm/-declaration/documents/publication/wcms_097835.pdf

- 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 arrangements;
- removal/retention of passports and identity documents;
- where a bank account is opened up for the victim but he/she does not have access to the money they have earned through employment or through entitlement to state benefits; and
- threat of reporting to the authorities where the worker is of illegal status.

2.4.10 Migrant workers, whether illegal or legal migrants working illegally, are most at risk of exploitation. Traffickers use a number of means to exploit migrant workers. Traffickers often use regular migration routes and work visas, but then utilise debt bondage, or the removal of documents to control the worker. They also take advantage of the migrants' uncertainty about their rights and status to subject victims to forced labour. Some migrant workers come to Northern Ireland with the expectation of certain kinds of work or a particular job but upon arrival are forced to do other work.

2.4.11 One of the challenges in prosecuting those who traffic for labour exploitation is the fact that few victims are willing to report their circumstances to police. Exploited migrant workers do not always consider themselves to be 'victims' of a crime. Even though they may be aware that they are paid less than the minimum wage and work long hours, they may consider their situation in Northern Ireland to be superior to that of their country of origin where wages may be considerably lower and working conditions even worse.

2.4.12 The PPS will continue to work with other agencies, such as the Gangmasters and Labour Abuse Authority (GLAA), to build strong cases and to ensure effective prosecution of exploitative employers.

Enabling others to acquire benefit

2.4.13 This is defined as any benefit derived by the trafficker such as profit, personal benefit or privilege. It can include, but is not restricted to, money from state financial assistance such as child benefit or universal credit. For example, children may be trafficked into Northern Ireland for the purpose of enabling the trafficker or others to obtain child benefit. Children may also be trafficked within Northern Ireland for this purpose by being moved between different addresses and adults. Adult victims may be deceived or coerced into helping their traffickers on account of their vulnerability or disability.

Children

2.4.14 Children may be sold into forced labour or servitude through debt bondage by family members where they are vulnerable to sexual or physical abuse. Children may be used in criminal enterprises, for example, working in cannabis farms or pick-pocketing (theft) gangs. Unaccompanied asylum-seeking children may be targeted by traffickers who exploit them to enable themselves or others here to acquire benefits. Children who are born in the UK can also be vulnerable to traffickers who exploit and abuse them, for example through prostitution or pornography.

Organ harvesting

2.4.15 This is where victims are trafficked in order to sell their body parts and organs for transplant.

2.4.16 Trafficking of human beings should not be confused with 'smuggling' of human beings. The next section helps to explain some of the differences.

2.5 What is smuggling?

2.5.1 The Palermo Protocol²⁰ makes a clear distinction between trafficking and smuggling. In short, smuggling is the facilitation of irregular border crossings or irregular stays, while the aim of trafficking is the exploitation of human beings. Another distinction is that smuggling²¹ always entails the crossing of a border, which is not necessarily the case in trafficking.

2.5.2 Victims who are trafficked have little choice in what happens to them, and it is generally against their will or under some form of false pretence. People smuggling generally takes place with the consent of the person being smuggled, although some may feel that they have no choice but to seek to be smuggled as they may have to flee from persecution or conflict. Other reasons for persons seeking to be smuggled may include employment and economic opportunity. Once persons 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.

2.5.3 Factors which assist to distinguish between smuggling and trafficking are set out below.

²⁰ <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

²¹ The UN Protocol against the smuggling of Migrants by Land, Sea and Air, adopted in 2000 defines human smuggling as "...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which he is not a national."

Consent

- 2.5.4 Smuggling is a voluntary act and there is normally little coercion/violence involved or required from those assisting in the smuggling.

Exploitation

- 2.5.5 There is no exploitation by the smugglers of their victims once they reach their destination and effectively their relationship ends on arrival at their destination. Trafficking victims on the other hand are subjected to a cycle of exploitation.

Profits

- 2.5.6 These are derived primarily from transportation and facilitation of illegal entry into another country, whereas traffickers profit primarily from the exploitation of their victims.
- 2.5.7 However, in some cases the distinction between smuggled and trafficked persons will be blurred. A victim may have started out being smuggled into the country, but during their journey or when they arrive at their destination they could become the victim of trafficking, slavery and servitude offences. This can happen if someone has started their journey to the UK as a willing participant, perhaps travelling to the UK to work in a new job. However, either during their journey or when they arrive, they become vulnerable to traffickers and are exploited. 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. It is important to examine all the circumstances to determine whether someone has been smuggled or trafficked.

Legislation

- 2.5.8 The Immigration Act 1971²² is the main piece of legislation that is used to prosecute the offence of 'smuggling'. However, there may be linked offences that can also be prosecuted, for example under the Forgery and Counterfeits Act 1981 or sections 25 or 26 of the Identity Cards Act 2006.
- 2.5.9 Section 25 of the Immigration Act 1971 creates an offence of assisting unlawful immigration (known as facilitation). The offence was substituted by section 143 of the Nationality, Immigration and Asylum Act 2002 which came into force on the 10th February 2003. This widened and extended the old

²² <https://www.legislation.gov.uk/ukpga/1971/77/contents>.

facilitation provisions and covers any act facilitating a breach of immigration law by a non-EU citizen (including a breach of another Member State's immigration law) and acts covered by the old offence of 'harbouring'.

3. Victims and Witnesses

3.1 General Overview

3.1.1 A person may be considered a victim of MSHT regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of any familial relationship between the perpetrator and the victim.

3.1.2 Loss of freedom is a defining feature of MSHT. For example, 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 women in particular. Prosecutors are aware that victims can also suffer other forms of coercion; their freedom may be less constrained, they may be given some 'payment' from their earnings etc. They may be deceived into believing they are coming here for a better life. The issues of coercion and control for victims of MSHT offences were similar to those suffered by many victims of domestic and sexual violence and abuse.²³

3.1.3 In cases of MSHT, coercion and control²⁴ could be demonstrated in a number of ways:

- a manifestation of control deprived victims of the will to leave: others may be too demoralised to do so;
- there may be no physical violence used, or restrictions on movement, but psychological (for example threats against members of the victim's family in their home country) or coercive means are used to effect control;
- another form of psychological control is exerted through traffickers warning victims that they will face imprisonment, deportation and mistreatment by the state authorities for entering the country illegally, working illegally or having been involved in criminal activities;
- there could be confiscation and control of the victim's identity documents, passports and other important papers;

²³ [Criminal Justice Inspection - Without Witness: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in Northern Ireland, 2018.](#)

²⁴ <http://www.cjini.org/getattachment/df690ef3-5352-457e-bbeb-2957b531b0/report.asp>

- the trafficker might open up a bank account in the victim's name but does not allow them access to the money that they have earned through employment or their entitlement to state benefits;
- accommodation may be a condition of employment and high rent comparative to earnings creates a debt bondage relationship;
- victims may be physically free to leave but are effectively a prisoner of their circumstances;
- when controlled by discipline, threats and violence, victims effectively become institutionalised;²⁵ and
- victims may develop Stockholm Syndrome.²⁶

3.1.4 Prosecutors recognise that victims often face barriers in coming forward and giving evidence. 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 may also distrust the authorities due to their experiences with the authorities in their own country. There could also be a concern by victims that they might risk deportation to their country of origin as a result of coming forward to the authorities. They may have a vulnerability which can make accessing services difficult or they may have experienced prejudice in the past which can result in them being reluctant to participate in the criminal justice process.

3.1.5 Prosecutors recognise the diversity of victims. Victims' experiences of trafficking are undoubtedly different and affected by their ethnicity, age, immigration status, religion, disability, sexuality, gender²⁷ and culture. For example, child victims or vulnerable adults may not fully understand what is happening to them or may be, or feel, wholly dependent on their trafficker. Prosecutors will consider the needs of each victim on an individual basis and will ensure that, where appropriate, legal measures are sought, and pre-trial consultations are held to protect and support the victim(s).

²⁵ <http://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery>

²⁶ A condition that causes hostages to develop a psychological alliance with their captors as a survival strategy during captivity.

²⁷ The UN Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment considers that "complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress. (CAT/CGC/3 (13 December 2012) para 33.

- 3.1.6 It should also be noted that victims of MSHT may not perceive themselves as victims or consider themselves to be exploited. This could perhaps be because they have formed a relationship with their traffickers and in many cases could be living with them. Often these victims perceive the person who has trafficked them as having offered them a better life, as they come from a background of extreme poverty and deprivation and would have been similarly exploited in their country of origin.
- 3.1.7 This does not mean that they are not victims and a successful prosecution is not dependent on their cooperation with the criminal justice process. There have been successful ‘victimless’²⁸ prosecutions taken forward where the evidence of exploitation was derived from proof of, for example, controlling prostitution of these victims for financial gain.
- 3.1.8 There may be a requirement to obtain the services of an expert in order to help to explain the cultural complexities that might exist in a particular case. The expert could assist the investigation in helping police to understand how victims should be treated. In such circumstances, the expert might be requested to give evidence in a case in order to advise on cultural issues that can often be outside of the day to day lived experiences and knowledge of the courts / jury.

3.2 Helping victims and witnesses to give evidence

- 3.2.1 Giving evidence can be a traumatic experience for victims. Victims of MSHT may be particularly vulnerable or intimidated. They can frequently be targeted because of their vulnerabilities, such as living with a physical or learning disability. Co-existing conditions related to mental health or addiction might also be a factor in their vulnerability.
- 3.2.2 The early identification of a vulnerable or intimidated witness by the police and early discussion with the prosecutor are essential to the conduct of the case.
- 3.2.3 Section 24 of the HTA 2015 provides for special measures to be used in certain circumstances for victims of MSHT. This section amends the Criminal Evidence (Northern Ireland) Order 1999 so that specific reference is made to witnesses that are eligible for assistance if they are the complainants in respect of a slavery or human trafficking offence. They are automatically eligible to apply for special measures.

²⁸ *The term ‘victimless’ in this context is used to describe the passage through court of a case without the need for the victim to participate or give evidence. It does not mean that there are not real victims to these offences who have been deeply traumatised by their experience.*

Special Measures

3.2.4 If a victim or witness is vulnerable or intimidated, legislative provisions exist to provide 'special measures' to assist them to give their best evidence.

3.2.5 The special measures currently available are:

- playing to the court the victim's or witness's video recorded interview (previously taken by the police during the course of the investigation). This means that the victim or witness will not have to give 'live' evidence about what happened to them, but they will still have to answer questions put to them by the defendant's lawyer in cross examination;
- a victim or witness may give evidence from behind a screen in a courtroom to prevent the victim or witness and the defendant seeing each other;
- a victim or witness may give evidence away from the courtroom through a live television link to prevent the victim or witness having to go into court. They will not see the defendant over the TV link but the defendant will usually still see the victim or witness on a TV screen;
- a victim or witness may give evidence in private where the judge clears the public gallery of the courtroom;
- provisions may be made for the lawyers and judiciary to remove their wigs and gowns;
- an intermediary may be appointed to assist victims or witnesses who may have difficulty in understanding questions and/or framing answers coherently, to give their evidence to the police and at court; and
- the victim or witness while giving evidence, may be provided with such devices as the court considers appropriate, with a view to enabling questions or answers to be communicated by or to the victim or witness.

3.2.6 Public Prosecutors will make applications for special measures in all appropriate cases.

3.2.7 When an application is made, the judge makes the decision about whether special measures will be allowed. The court will only allow a special measure where it considers that the measure would be likely to improve the quality of evidence given by the victim or witness and therefore be likely to maximise,

so far as practicable, the quality of evidence given by them. More than one special measure can be granted.

- 3.2.8 The PPS will discuss with police what special measures might assist the victim or witness to give evidence in court and then, if appropriate, make an application to the court to grant these. The views of the victim or witness are taken into account with regard to whether they want the assistance of special measures and what special measure(s) may be most appropriate. Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary, a meeting can be arranged with the victim or witness to discuss what special measures would be appropriate. If the victim or witness is a child, their evidence is usually video recorded and played in court unless the court considers that it is not in the interests of justice for this to be done.
- 3.2.9 The PPS will ensure that victims and witnesses are made aware that they can change their mind about special measures. In some cases victims or witnesses initially state that they do not require special measures and may subsequently realise that they do but are afraid to say so.
- 3.2.10 Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.
- 3.2.11 However, it is acknowledged that some victims and witnesses are concerned about their safety and fear that personal details or information about them might become public knowledge and place them at risk of further attack or harassment. The PPS is aware that the issue of anonymity may be of particular concern to victims of trafficking.
- 3.2.12 The PPS will not disclose addresses of victims or witnesses to the defendant and, unless already known or if required for evidential purposes, these will not be mentioned in court proceedings.
- 3.2.13 There are also legislative provisions which exist to protect victims who have concerns about their identity or personal details becoming known to the defendant or becoming a matter of public record.

Anonymity

- 3.2.14 Provision is made by the Coroners and Justice Act 2009 for a witness to give evidence anonymously where the court is satisfied: that this is necessary to

protect the safety of the witness; that it is consistent with the fair trial of the defendant and that it is in the interests of justice for the witness to give evidence. Prosecutors will apply for a witness to be permitted to give evidence anonymously only when these conditions are met.

Reporting Restrictions

- 3.2.15 Prosecutors 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.
- 3.2.16 Children and victims of rape and serious sexual offences are entitled as a matter of law to anonymity in the media, even if their name has been given in court.

Giving evidence from another country via video-link

- 3.2.17 Where the victim wishes to remain in their home country, the prosecutor can make an application under Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989 for them to give evidence via a video-link from there.
- 3.2.18 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 an application.

Interpreter provision / translation²⁹

- 3.2.19 In the case of victims and witnesses for whom English is not their first language, the PPS will seek advice from police as to their capability to give and understand oral evidence in English or whether the witness requires the use of an interpreter. The PPS will attempt to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.
- 3.2.20 At the investigation stage, police will make arrangements for interpreter services. The PPS will work with the Northern Ireland Courts and Tribunals Service (NICTS) to ensure that an interpreter is available for court appearances.

²⁹ *The Northern Ireland Victim Charter entitles victims to access translation or interpretation when reporting a crime and during the police investigation. Victims of gender based crimes could ask for an interpreter of a particular sex.*

<https://www.justiceni.gov.uk/sites/default/files/publications/doj/victim-charter.pdf>

- 3.2.21 The PPS also have a contract for the provision of professional interpreter and document translation services.
- 3.2.22 Interpreters must be independent of the witness, their family and of the investigation. The recent CJINI inspection³⁰ highlighted the use of interpreters in respect of MSHT throughout the criminal justice system and the need to raise awareness of some difficulties that might arise when securing this service.³¹
- 3.2.23 In addition, interpreters or translators may be required to translate correspondence or to interpret for victims at meetings with the prosecutor if no prosecution is directed.
- 3.2.24 The PPS will make arrangements for the provision of sign language interpreters for witnesses who are deaf or hard of hearing.
- 3.2.25 The PPS can also provide telephone interpretation, written word translation and transcription services.

Witness Service and Young Witness Service

- 3.2.26 There are two witness support schemes available in courthouses in Northern Ireland - one for adult witnesses (the Witness Service) provided by Victim Support NI (VSNI) and one for younger witnesses under the age of 18 (the Young Witness Service) provided by NSPCC. Both VSNI and NSPCC aim to support victims and prosecution witnesses before, during and after the experience of attending court to give evidence.
- 3.2.27 Referrals to the Witness Service can be made with or without the consent of the victim or witness. The police can do this at the investigation stage. However, once the referral is made, it will be up to the victim or witness to decide if they wish to avail of the services. As it is important that the referral to the Witness Service is made as far in advance as possible, in order that pre-trial support can be offered and delivered in an effective manner, the PPS will also take steps to make the referrals as soon as practicable. This can be done by informing the victim or witness of the service in the same correspondence which encloses the 'Requirement to Attend Court' and offering an opt-out to the victim or witness if they do not want their details to be passed to the Witness Service. Where the victim or witness details are passed to the Witness Service, their specially trained staff endeavour to make contact in advance of the court date to offer their assistance.

³⁰ <http://www.cjini.org/TheInspections/Inspection-Reports/2020/October-December/Modern-Slavery>.

³¹ https://www.unodc.org/documents/human-trafficking/TIP_module10_Ebook.pdf.

3.2.28 The aim of the Witness Service is to support victims and prosecution witnesses together with their families and friends, to deal with attending court and giving evidence. The Witness Service normally contact the victim or witness before the court hearing to offer its service. Trained volunteers offer confidential services free of charge, including:

- pre-trial support and preparation;
- the opportunity to talk to someone;
- help to apply for Criminal Injuries Compensation, if appropriate;
- pre-trial familiarisation and informative visit to court; and
- information on court layout.

Support during the trial:

- a quiet place to wait during their time in the court building;
- accompanying the victim or witness into the courtroom if appropriate;
- preparation for a possible verdict and other potential outcomes;
- practical help, for example, assistance with expenses forms; and
- support and practical help for any persons accompanying witnesses.

Support following the trial:

- an opportunity to talk about the experience of giving evidence following the case; and
- referral onwards for further help if appropriate.

The Witness Service does not:

- discuss the details of the case with witnesses; or
- provide transport to and from court for witnesses.

The Young Witness Service

3.2.29 The NSPCC Young Witness Service (YWS) is a free, independent and confidential service, provided by a team of social work staff and trained volunteers. The service offers support to young witnesses and their parents/carers before, during and after any trial.

3.2.30 The PPS makes referrals to the YWS where consent is given to do so. Again the PPS advises the victim or witness of the availability of this service in its correspondence enclosing the 'Requirements to Attend Court' documentation. The parent or guardian, or person with parental responsibility for the child or young person, has the opportunity to opt out of having their

details passed to the Young Witness Service. Where the details are passed to the YWS, their specially trained staff make contact and explain services they offer.

3.2.31 The service YWS offers includes:

- explaining the court layout and what happens at court;
- a visit to see the court before trial;
- trying to help with any worries about going to court;
- showing young witnesses ways to stay calm;
- providing support at court for families and supporting the young witness in the TV/video link room or the courtroom;
- a quiet and safe place to wait during their time in the court building;
- preparation for possible verdict and other potential outcomes;
- support at sentencing;
- making sure the police, the prosecution, the court and lawyers are aware of the needs and wishes of the young witness;
- advice to parents and carers on how best to support their child;
- an opportunity to talk about the experience of giving evidence following the case; and
- onward referral to help from other agencies.

3.2.32 YWS is independent and does not talk to young witnesses or their parents or carers about evidence in the case.

3.2.33 Further information about meetings with vulnerable or intimidated witnesses and services provided to victims and witnesses at court is contained in the PPS Victim and Witness Policy.³²

Assistance for victims or witnesses with a disability or other vulnerability

3.2.34 The definition of disability covers a wide range of physical conditions, mental health conditions, sensory, hidden, learning and acquired disabilities such as a brain injury.

3.2.35 The police will identify to the PPS victims or witnesses with disabilities to enable an assessment to be made about any applicable measures that may be needed to assist with matters such as physical access to buildings, assistance with giving evidence by special measures or the need for another person to aid communication, for example, a sign language interpreter.

³² <https://www.ppsni.gov.uk/publications/victim-and-witness-policy>.

- 3.2.36 PPS staff treat every person they come into contact with as an individual and are sensitive to their needs. The PPS is committed to training its staff in this regard and will engage with specialist agencies for this purpose as appropriate.
- 3.2.37 In terms of physical access, the PPS offices are designed and constructed to facilitate access for people with mobility needs. The PPS will make appropriate arrangements to facilitate a person's access to the PPS offices for the purposes of attending a consultation. Consultation presents an opportunity for the victim or witness to meet the prosecutor and discuss any concerns a person with a disability may have about the court process.
- 3.2.38 In addition, depending on the nature of the disability and the views of the person concerned, the PPS will consider making an application for appropriate special measures to maximise the quality of the evidence which can be given in court.
- 3.2.39 When a case goes to court, the PPS will work in conjunction with NICTS to make the necessary arrangements to ensure ease of access for wheelchair users, or persons with other disabilities who need assistance in accessing the court to give evidence.

3.3 Child Victims³³

- 3.3.1 The Trafficking Convention provides that a child is any person under eighteen years of age. Children who are trafficked are exploited through various types of control such as violence, the threat of violence, sexual abuse, alcohol and drug abuse, emotional abuse, manipulation through distorting cultural practices and imprisonment to suppress victims and ensure their compliance. Some are sold by family members or are in debt bondage, while others may be coerced through more subtle means.
- 3.3.2 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. Children are also vulnerable to being exploited by criminal gangs and made to engage in criminal activities such as acting as pick-pockets (theft) or working in cannabis factories and therefore may come to the attention of police due to being suspected of having committed a criminal offence.

³³ Additional information regarding "Working Arrangement for the Welfare and Safeguarding of Child Victims of Human trafficking" can be found at: <https://www.healthni.gov.uk/sites/default/files/publications/health/working-arrangements-potential-child-victims-of-human-trafficking-and-modern-slavery.pdf>

- 3.3.3 Children living in the UK can also be targets for traffickers. Children (and adults) can be trafficked within the UK for sexual exploitation and can be moved from house to house or city to city for this purpose. For some this abusive sexual relationship might begin and end with their 'exploiter friend', but more often it will lead to coercion into sexual activity with a wider group of abusers.
- 3.3.4 All children who are suspected of having been trafficked will therefore be considered by the relevant Health and Social Care Trust (the Trust) to be children in need of care and protection under the Children (Northern Ireland) Order 1995.
- 3.3.5 If a child is identified by police during operations, the Trust should be notified by police immediately so that a child protection plan is put into place and a strategy discussion coordinated. It is important that the Trust is made aware of any decision affecting the welfare of a child victim under their care during the decision-making and prosecution process.
- 3.3.6 Barnardo's NI³⁴ support unaccompanied migrant children and child victims of trafficking through their delivery of the regional Independent Guardian Service. This is legislated for under section 21 of the HTA 2015. When considering a file, the PPS will also ask police as the 'first responder' to liaise with the Independent Guardian Service if it is considered that a child may have been trafficked and contact has not already been made. The PPS recognises that the best interests of the child are paramount.

Age disputes

- 3.3.7 Some young people may not be in possession of official documentation confirming their date of birth or may have been told to lie about their age to evade attention from the authorities. A young person under the age of 18 years found in a brothel, for example, may have been told to state that he or she is an adult. Other people may be been told to claim that they are under 18 years.
- 3.3.8 Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005³⁵ states, "*...when the age of the victim is uncertain and there are reasons to believe that the victim is or may be a child, he or she shall be presumed to be a child and shall be accorded special protection*

³⁴ <https://www.barnardos.org.uk/what-we-do/services/independent-guardian-service>.

³⁵ CETS 197 - Council of Europe Convention on Action against Trafficking in Human Beings (coe.int).

measures pending verification of his/her age.” The PPS will act in accordance with the UNCRC should such an issue arise in a case.

3.3.9 Where there is uncertainty about a suspected victim’s age Social Services conduct a ‘Merton compliant age assessment’. If the outcome of the assessment is subsequently disputed then the Court will be responsible for determining the age. All Health and Social Care Trusts should have ready access to social workers who have been trained in conducting Merton compliant age assessments of young people.

3.3.10 A Merton compliant age assessment normally includes a face-to-face meeting; investigation of the general background of the applicant and ensuring adherence to standards of fairness. The Merton judgment, handed down by Judge Burnton in the case of R(B) v London Borough of Merton (2003) EWHCA 1689, provided “...*guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.*” The Court of Appeal case of R (FZ) v London Borough of Croydon (2001) EWCA Civ 59 brought clarity to the way in which age dispute claims should be handled by both local authorities and the Court. The Court of Appeal affirmed the guidelines set down by Judge Burnton and further outlined what fairness demands in an age assessment case.

3.4 The National Referral Mechanism

3.4.1 The National Referral Mechanism³⁶ (NRM) assists in identifying whether a person is a victim of human trafficking. To enter the NRM, potential victims must first be referred to the Single Competent Authority. This enables victims to access support, medical care, training and education, translation services, as well as psychological and practical help. Under the NRM, frontline staff from designated agencies and organisations with grounds for concern that a person may be a victim of human trafficking make a referral to the National Referral Mechanism. These are known as First Responders.

3.4.2 A number of agencies have been designated as First Responders. In Northern Ireland, these are the main statutory agencies.³⁷ In relation to potential adult victims this role can be carried out by the PSNI, Home Office (Immigration and Enforcement), Border Force and UK Visas and Immigration. In the case of children, the First Responder may be a UK Border Force officer (if the child is recovered at a port of entry) or a Trust social worker.

³⁶ [National referral mechanism guidance: adult \(England and Wales\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/national-referral-mechanism-guidance-adult-england-and-wales)

³⁷ The First Responder organisations in Northern Ireland who may make NRM referrals are: Police Service of Northern Ireland; Gangmasters Labour Abuse Authority; UK Border Force; UK Immigration Enforcement and the Health and Social Care Trusts.

- 3.4.3 For potential victims of trafficking a First Responder will make a referral to the Single Competent Authority (SCA) within the Home Office. The NRM is the framework for identifying and referring potential victims of modern slavery and ensuring they receive the appropriate support.
- 3.4.4 The potential victim's case is considered and if approved, the victim is given a minimum 45 day reflection period during which time they are entitled to a range of support services, and will not be removed from the UK. In Northern Ireland accommodation and support is provided through Migrant Help and their delivery partner Women's Aid. Child victims are usually accommodated by Social Services.
- 3.4.5 At the end of the reflection period, a conclusive decision will be made and if the victim does not have 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.
- 3.4.6 The prosecutor will have regard to any information provided by the investigator relating to the NRM. Further discussion of the NRM and relevance to prosecution decisions is provided for in the next section.

THERE IS NO ONE TYPE OF MODERN SLAVERY VICTIM



VICTIM VULNERABILITIES

Victims are targeted by offenders due to their vulnerabilities



Limited access to education



Immigration status



Difficult family background



Child



Mental health problems



Drug & alcohol dependency



Homelessness/poverty



Geographic instability, natural disaster & war

DECEPTION

Victims are promised something which does not come into being. Some victims know their intended employment, most do not. It is likely that most will not know how exploitative the circumstances will be



Adoption



Boyfriend model



School



Au pair



Fruit, veg, flower picking



Conditions



Low wages



Hours worked

Victims may travel to the UK with different expectations

Victims may be misled about a job's nature, existence, or legality

Victims may be misled about their hours, wages, or living/working conditions

Victims are promised a better life, job opportunities, and more money. They may have debts, families to support, and struggle to get work at home

COERCION

Victims are coerced into exploitation through force, abuse or blackmail. Coercion may be ongoing throughout the exploitation



Substance addiction



Withholding of medication



Blackmail



Impersonation of authority



Abuse & force

SIGNS OF EXPLOITATION



Long hours



Substance addiction



Chaperoned/accompanied



Lack of possessions



Language barriers



Passport held by someone else



Pregnancy



Lack of personal protective equipment



Lack of access to medical care, strange injuries



Isolation & observation



Money deducted from salary for food



No keys/can't come and go



Malnutrition



Psychological trauma



Sporadic school attendance



Money withheld



Ritual abuse/witchcraft

WHY DO VICTIMS STAY?

Victims can stay within an exploitative situation for a number of reasons: they are scared to leave, feel they have nothing better to return to, or believe that they are living a better life. They may not see themselves as victims, or the situation might be more acceptable within their culture. Victims may have no money, are unsure where to go, or are fearful of authorities



Immigration status



Blackmail



Threats to family



ID taken



Debt bondage



Low wages

PROVING VICTIMHOOD



Is accommodation provided by the employer?



Is accommodation in poor condition or overcrowded?



Proof of organisation/payment of travel, to prove trafficking

Was the victim told to commit a crime?



Someone else has possession of the victims' documents



Proof of isolation



Health records



Use of CCTV to show who is withdrawing money from the victim's accounts



Was the victim accompanied to get their NINO? Did the chaperones give their contact details for a number of people?



Was the victim accompanied to get their bank card? What is the victim's money being spent on? Flights for other people?

4. Suspects in a Criminal Case Who Might be Victims of Trafficking or Slavery

4.1 General overview

- 4.1.1 The PPS recognises that adults and children may be investigated by the police for offences despite being a trafficked victim. This can arise if they have been trafficked or smuggled into Northern Ireland in order to commit criminal offences, for example, organised pick-pocketing, forced begging or commercial cannabis cultivation, but can also arise in circumstance where they are escaping from their trafficking situation, for example immigration offences.
- 4.1.2 Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (the Convention) states: “Each Party shall in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims of human trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so”.
- 4.1.3 The PPS cannot offer blanket immunity from prosecution to trafficked victims who may commit criminal offences. The statutory obligations placed on the PPS by the Justice (Northern Ireland) Act 2002 require public prosecutors to review each case received from the investigator in accordance with the Code for Prosecutors to determine whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should continue.
- 4.1.4 The Convention does not provide for immunity from prosecution for trafficked victims but it does require that careful consideration must be given as to whether the public interest requires prosecution in such cases.
- 4.1.5 Every case must be considered on its own merits, having regard to the seriousness of the offence committed. Should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this should be considered as a strong public interest factor mitigating against prosecution. Where there is clear evidence that the person has a credible defence of duress, the case should be discontinued on evidential grounds.
- 4.1.6 In order to enable the prosecutor to consider such factors they must be provided with the appropriate information from police or other sources who

suspect that the person may be a direct victim of trafficking. Further, this 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.

- 4.1.7 Where the circumstances of the arrest or information provided to a prosecutor suggest that someone may have been trafficked, the prosecutor will request the police to make further enquiries. These enquiries may include obtaining information from an organisation that supports trafficked victims. Indicators that a person may be a victim of human trafficking can be found at Annex D.
- 4.1.8 Prosecutors will take into consideration all relevant information provided by police and other agencies, including any decision arising from the NRM when deciding where the public interest lies in relation to prosecution.
- 4.1.9 Prosecutors should consider the recent ECHR decision in *V.C.L. & A.N.*³⁸ This ruling established that in every case where an investigation into a criminal offence has commenced, if there are suspicions that there could be a modern slavery element, the police must commence a modern slavery investigation in parallel to the offence for which the suspect (victim) has been arrested in every case. This is in addition to making a NRM referral.
- 4.1.10 To summarise, this case also states that the prosecution decision has to take into account the assessment made by the Single Competent Authority and if a different conclusion is reached and a decision to prosecute is taken or continues, there must be clear reasons for disagreeing with the SCA and furthermore, these reasons must comply with the Palermo Protocol.
- 4.1.11 If a decision to prosecute has already been taken prior to a defendant raising any issue of having been trafficked, then upon such issue being raised the defendant should be referred to the SCA for their decision. If the SCA make a finding that the defendant is a victim of human trafficking, the prosecution must review their decision in light of this information.

4.2 Legislation

Statutory Defence

- 4.2.1 Section 22 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (HTA 2015) came into force on 13 January 2015.

³⁸ *V.C.L. AND A.N. v. THE UNITED KINGDOM (coe.int)*.

- 4.2.2 Section 22 provides a statutory defence for adults who have committed certain criminal offences, having been compelled to do so where the compulsion is attributable to slavery or relevant exploitation (as defined in subsections (4) and (5)) and a reasonable person in the same situation, having the same relevant characteristics (as defined in subsection (3)) would have no realistic alternative to doing the act. This defence is intended to apply to person aged 18 and over.
- 4.2.3 Section 22(6) sets out the defence for children, defined as persons under the age of 18 years, and provides that victims who were children when they committed the offence need only prove that the offence was committed as the direct result of them being a victim of an offence under Section 1 or of relevant exploitation, as defined in section 22(7).
- 4.2.4 Section 22(9) clarifies that the defence does not apply to an offence, which in the case of a person over 21, is punishable on indictment with imprisonment for life or for a term of at least 5 years, other than –
- (a) an offence under—(i) section 4(2) of the Misuse of Drugs Act 1971 committed in respect of a Class A³⁹, Class B or Class C drug; (ii) section 5(2) of that Act committed in respect of a Class A⁴⁰ or Class B drug; (iii) section 6(2) of that Act;
 - (b) an offence under section 26A(3)(a), (b), (d), (e), (f) or (g) of the Immigration Act 1971;
 - (c) an offence under sections 1, 2, 3 or 4 of the Forgery and Counterfeiting Act 1981;
 - (d) an offence under section 106 of the Asylum and Immigration Act 1999;
 - (e) an offence under section 4 of the Identity Documents Act 2010.
- 4.2.5 A Court of Appeal decision⁴¹ placed the burden of proof on the prosecution to prove that an individual was not a victim of MSHT once the defence was raised. In such circumstances it will be for the prosecution to disprove the defence beyond reasonable doubt.

4.3 Prosecutor's obligations

- 4.3.1 When considering whether to proceed with prosecuting a suspect who might be a victim of trafficking, prosecutors should be aware of the clear obligations

³⁹ Section 22 Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (for offences from 27 April 2022).

⁴⁰ Section 22 Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (for offences from 27 April 2022).

⁴¹ *R v MK and Persida Gega* [2018] EWCA Crim 667.

imposed to consider non prosecution where the suspect has been compelled to commit a criminal offence as a direct consequence of being trafficked.

4.3.2 Differentiations should be made between a case involving the statutory defence and a case involving an offence to which the statutory defence does not apply, but it may nonetheless be a case where a trafficked victim has been compelled to commit the offence and therefore the prosecutor must apply the principles of the public interest test as they are relevant to the circumstances of each particular case.

4.3.3 These obligations arise under:

- Article 4 of ECHR which prohibits slavery and forced labour.⁴²
- Article 26 of the Council of Europe Anti-Trafficking Convention⁴³ which requires the United Kingdom to: "... provide for the possibility of not imposing penalties on victims [of trafficking] for their involvement in unlawful activities, to the extent that they have been compelled to do so".
- Article 8 of EU Anti-Trafficking Directive 2011/36/EU whereby "...national authorities are entitled not to prosecute or impose penalties on victims of trafficking human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to trafficking".
- R v LM & Ors⁴⁴ [2010] EWCA 2327 the court stated that prosecutors must consider the public interest in prosecution when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit it.
- R v O⁴⁵ [2008] EWCA Crim 2835 highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be pro-active in causing enquiries to be made.

A four-stage approach to the prosecution decision

4.3.4 Where a person who is suspected of a criminal offence may be a victim of human trafficking, prosecutors should adopt the following four stage assessment in addition to applying the Test for Prosecution:

⁴² https://www.echr.coe.int/documents/guide_art_4_eng.pdf

⁴³ [The EU Anti-trafficking Directive 2011/36/EU | Together Against Trafficking in Human Beings \(europa.eu\)](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/r_v_lm_and_others_1.pdf)

⁴⁴ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/r_v_lm_and_others_1.pdf

⁴⁵ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/r_v_o_2008_ewca_crim_2835_1.pdf

1. Is there a reason to believe that the person has been trafficked?;
2. If so, if there is clear evidence of a credible common law defence such as duress, the case should be discontinued on evidential grounds;
3. If there is clear evidence of a statutory defence under section 22 of the Act, the case should be discontinued on evidential grounds;
4. However, even where there is no clear evidence of duress or other common law defence, but the offence may have been committed as a result of compulsion arising from trafficking, prosecutors should consider whether the public interest lies in proceeding to prosecute or not.⁴⁶

The duty to make proper enquiries and to refer through the National Referral Mechanism (NRM)

4.3.5 In considering whether a suspect might be a victim of trafficking, as required in the first stage of the assessment, prosecutors should have regard to the following:

1. The duty of the prosecutor to make proper enquiries in criminal prosecutions involving individuals who may be victims of trafficking.
2. The enquiries should be made by:
 - advising police who investigated the original offence that they must investigate the suspect's trafficking situation; and
 - advising police that, as First Responders, they should refer the individual through the NRM for victim identification. All PSNI officers are able to refer potential victims of trafficking through the NRM.

4.3.6 It should be noted that adults must consent to have their case referred through the NRM. If an adult suspect does not consent to their referral, the prosecutorial decision should be made on whatever other information might be available as they may still be a victim of MSHT.

4.3.7 These steps must be followed regardless of what has been advised by the investigator or whether there is an indication of a guilty plea by the suspect's legal representative.

Referral through the NRM and the Single Competent Authority decision

4.3.8 The following process should be followed:

⁴⁶ See judgment in *LM & Ors* [2010] EWCA Crim 2327).

- Following the NRM referral, the Single Competent Authority (SCA) will first make a 'reasonable grounds' decision. A positive reasonable grounds decision is made when there are reasonable grounds to believe the individual is a potential victim of human trafficking. The SCA aims to make reasonable grounds decisions within 5 working days of receiving a referral. The trafficked victim will then be eligible for government funded support for at least 45 days, or such longer period as the Department thinks necessary⁴⁷, while their case is being considered.
- During the 45 day period (or any longer period where applicable), the SCA gathers further information about the victim; and this additional information is used to make a conclusive grounds decision on whether the referred person is a victim of human trafficking.
- A conclusive grounds decision is whether on the balance of probability it is more likely than not that the individual is a victim of human trafficking.
- Prosecutors should take account of the SCA decision (reasonable grounds or conclusive grounds) of the identification and status of the suspect as a victim of trafficking when considering the decision to prosecute. However, it should be noted that prosecutors are not bound by the decision of the Single Competent Authority.

Disclosure and the NRM decision

- 4.3.9 In all cases of MSHT, where an individual has been referred to the SCA for a reasonable grounds decision, the referral form and all materials arising from same may be discloseable to the defence. The material will be requested by the police and the Disclosure Officer will then consider it and add it to the disclosure schedule.
- 4.3.10 The prosecutor must apply the disclosure test set out in the Criminal Procedure and Investigations Act 1996, and disclose the material to the defence if it is capable of undermining the case for the prosecution or assisting the defence case.
- 4.3.11 It should also be noted that material gathered during the course of the NRM process may be served as evidence by the prosecution. For example, there may be inconsistencies in the answers given by the individual to the SCA

⁴⁷ Section 21(3)(b) of Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (commencement date from 27 April 2022).

when compared to what is contained in the individual statement to the police or police interview. This might go to the credibility of the individual.

Where there is credible evidence of trafficking (a positive SCA decision)

4.3.12 In these circumstances:

- Prosecutors should consider whether or not there is clear evidence of a credible common law defence of duress, as required in the second stage of the assessment. If so the case should be discontinued on evidential grounds.
- If not, prosecutors should consider whether or not the trafficking victim was compelled to commit the offence.

Has the victim been compelled to commit an offence?

4.3.13 The following guidance on considering whether a victim has been compelled, applies to adults only and does not apply to child victims of trafficking (see paragraphs 4.4.7 – 4.4.9 below).

4.3.14 ‘Compulsion’ includes all the means of trafficking defined by the United Nations Protocol on Trafficking (The United Nations Convention against Transnational Organised Crime 2000 supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons): threats, use of force, fraud and deception, inducement, abuse of power or of a position of vulnerability, or use of debt bondage. It does not require physical force or constraint.

4.3.15 In considering whether a trafficked victim has been compelled to commit a crime, prosecutors should consider whether any of these means has been employed so that the victim has effectively lost the ability to consent to his / her actions or to act with free will.

4.3.16 The means of trafficking used in an individual case may not be sufficient to give rise to a defence of duress, but how the person was trafficked will be relevant when considering whether the Public Interest Test is met in deciding to prosecute or proceed with a prosecution.

4.3.17 In assessing whether the victim was compelled to commit the offence, prosecutors should consider whether the offence committed was a direct consequence of, or in the course of trafficking and whether the criminality is significantly diminished or effectively extinguished because no realistic alternative was available but to comply with the dominant force of another.

4.3.18 If the defendant has previously been a trafficked victim but the offence has been committed without reasonable compulsion occasioned by the trafficking, there are no particular trafficking related public interest considerations, and the Test for Prosecution should be applied in the usual way.

Early guilty plea indicated

4.3.19 Where a suspect has been charged and there is (1) an indication of an early guilty plea (2) a full investigation has not been carried out and (3) the circumstances are such that there is suspicion of trafficking, at the first hearing prosecutors should request an adjournment for further investigation and ask that a plea is not formally entered.

Credible evidence of trafficking following decision to prosecute

4.3.20 In cases where a decision has already been taken to prosecute a suspect, but further information or evidence comes to light, or the status of a suspect as a possible victim of trafficking is raised post-conviction, for example in mitigation or through a pre-sentence report, then prosecutors should seek relevant adjournments and ensure that the steps outlined in paragraph 4.3.4 are carried out.

4.4 Additional requirements for suspects who may be children

Assessing age and trafficking status

4.4.1 In cases where the defendant may be a child victim of trafficking, two linked questions must be addressed:

1. what is the defendant's age?
2. what evidence is there to suggest that the defendant has been trafficked?

4.4.2 If the defendant is a child victim of trafficking, the extent to which the crime alleged against him or her was consequent on and integral to his / her exploitation must be considered. In some cases the criminal offence is a manifestation of the exploitation. This might also arise in the case of an adult victim.⁴⁸

Due enquiry as to age

4.4.3 Some young people may not be in possession of official documentation confirming their date of birth or may have been told to lie about their age to

⁴⁸ See paragraph 20 of *L, HVN, THN and T*⁴⁸ [2013] EWCA Crim 991.

evade attention from the authorities. A young person under the age of 18 years found in a brothel, for example, may have been told to state that he or she is an adult. Other people may have been told to claim they are under 18 years (please refer to section 3.3 for more detail on this).

- 4.4.4 Where uncertainty about age arises at court, The Criminal Justice (Children) (Northern Ireland) Order⁴⁹ 1998 directs the court to "*make due inquiry*" about the defendant's age and "...*take such evidence as may be forthcoming at the hearing of the case*" for this purpose.

Presumption that a victim is a child

- 4.4.5 Article 10(3) of the Council of Europe Anti-Trafficking Convention provides:

"When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall presume to be a child and shall be accorded special protection measures pending verification of his/her age".

If at the end of a "due enquiry" into age, the age of the defendant remains in doubt he or she must be treated as a child.⁵⁰

Referring children through the NRM

- 4.4.6 In the case of suspects who are (or appear to be) children, the NRM referral should be made through the relevant social services trust. Should a prosecutor suspect that a child suspect is a victim of human trafficking then they should ask the Investigating Officer to advise the relevant social services trust who will make the referral to the NRM.

Children and "the means of trafficking"

- 4.4.7 In determining whether a child is a victim of trafficking, his or her consent to being trafficked is irrelevant and the means by which they are trafficked is also irrelevant. Therefore it is not necessary for any of the following to be present: threats, use of force, fraud and deception, inducement, abuse of power or of a position of vulnerability, or use of debt bondage.
- 4.4.8 When considering whether to prosecute a child victim of trafficking, prosecutors will only need to consider whether or not the offence is committed as a direct consequence of, or in the course of trafficking. The

⁴⁹ <https://www.legislation.gov.uk/nisi/1998/1504/contents>.

⁵⁰ See paragraph 25 of L, HVN, THN and T [2013] EWCA Crim 991.

requirements for the person to have been compelled to commit the offence in order to invoke the section 22 defence do not apply to cases of children. Section 22(6) of the HTA 2015 applies here.

- 4.4.9 Guidance has been issued to police and Immigration authorities on identification of victims and the indicators that might suggest that someone is a trafficked victim. However, all decisions in the case remain the responsibility of the prosecutor.

4.5 Suspects who may also be victims of slavery including forced labour and servitude

- 4.5.1 Prosecutors should also be alert to situations where a person suspected of having committed a criminal offence is also a victim of slavery, including forced labour and servitude. The victim may have been trafficked but this may not always be the case with victims of slavery. Where the victim has been trafficked the four stage approach set out above should be followed.
- 4.5.2 However, if there is no evidence that the victim has been trafficked, but there is evidence they have been held as a slave and subject to forced labour or servitude, the prosecutor should consider whether the criminal offence the victim is suspected of committing may be directly related to their position and checks must be made as to whether the offence was committed under duress or other form of compulsion. Where there is clear evidence of duress or compulsion, it will generally not be in the public interest to prosecute unless the offence is so serious or there are other aggravating factors.
- 4.5.3 In any case where the statutory defence has been raised, the prosecutor will bring this to the attention of the relevant Assistant Director. This is to ensure that a consistent approach is being taken by prosecutors in such cases.

5. Sentencing

5.1 General Overview

- 5.1.1 Sentencing is a matter for the court. Prosecutors must not approbate expressly or impliedly the sentence to be imposed by the court.
- 5.1.2 Prosecutors must not attempt to influence the court with regard to sentence. If, however, a defendant is unrepresented it is proper to inform the court of any mitigating circumstances about which counsel is instructed.
- 5.1.3 Although prosecutors should not advocate a particular sentence, they must be in a position to assist the court as to any statutory provisions relevant to the offence and to any relevant guidelines as to the sentence laid down by the Court of Appeal. In this context it is appropriate for the prosecutor to indicate the sentencing range appropriate to the facts of the case in line with relevant authorities. In the decision in Attorney General's Reference No 8 of 2004 (Dawson), the Lord Chief Justice stated:

“Where an indication is given by a trial judge as to the level of sentencing and that indication is one which prosecuting counsel considers to be inappropriate, or would have been considered to be inappropriate if he had applied his mind to it, he should invite the attention of the court to any relevant authorities”.

- 5.1.4 The prosecutor should also draw the court's attention to any expert evidence or specialist reports in relation to relevant matters, such as where a defendant has a mental health issue. The prosecutor must also be able to assist the court in relation to the provisions of the Criminal Justice (Northern Ireland) Order 2008 which relate to the assessment and dangerousness of a defendant. In these cases a prosecution advocate should ensure the court has available all relevant material and is aware of all relevant facts to enable it to determine whether the defendant poses a significant risk to members of the public of serious harm.
- 5.1.5 Prosecutors should also be mindful of the Attorney General's guidelines on the role of prosecuting counsel in discussions in chambers on pleas and sentencing. In a 'Rooney'⁵¹ hearing the prosecutor will not approbate any particular sentence and will present the prosecution case at its height.

⁵¹ A Rooney Hearing is a hearing at which, upon a defence request, the judge will give an indication of the maximum sentence which the defendant will receive in the case if they enter a plea of guilty.

- 5.1.6 The prosecutor will apply for any such ancillary orders, as may be appropriate to the circumstances of a particular case. Such ancillary orders can include Serious Crime Prevention Orders and orders in relation to compensation, forfeiture and confiscation. The HTA 2015 provides the courts with powers to make slavery and trafficking reparation orders for the confiscation of assets of persons found guilty of offences, and the requirement to compensate victims. The legislation also allows for Slavery and Trafficking Prevention Orders.
- 5.1.7 Section 7 of the Act imposes a minimum sentence of two years' imprisonment for adult offenders, who have been convicted of an offence of human trafficking or of slavery, servitude and forced or compulsory labour, unless exceptional circumstances apply. These circumstances must be set out in writing and recorded on the court record.
- 5.1.8 A conviction will also result in assessment for dangerousness under the provisions of the Criminal Justice (Northern Ireland) Order 2008.

5.2 Ancillary or additional orders

- 5.2.1 Ancillary or additional orders that may be applied for which are relevant to human trafficking include:
- Slavery and Trafficking Prevention Order (STPO) is an order which is used to prevent slavery and human trafficking offences being committed by someone who has already committed such offences, or to prevent someone who may commit this type of offence from doing so (Schedule 3 of the Act);
 - Slavery and Trafficking Reparation Order is an order requiring the offender to pay compensation to the victim of a relevant offence for any harm resulting from that offence (Schedule 2 of the Act);
 - Serious Crime Prevention Order (SCPO) is an order which may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime;
 - Risk of Sexual Harm Order (RSHO) is a preventative order used to protect children from the risks posed by adults engaged in sexual activity with a child;

- Sexual Offences Prevention Order (SOPO) is an order which the court may make for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant;
- Registration on the Sex Offenders Register;
- Deportation Order is an order which the court may make providing that a foreign national who is subject to immigration control be deported if he or she has been convicted of an offence;
- Deprivation of Property Order is an order 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 is a civil order which may contain such restrictions or prohibitions as the court considers appropriate to protect a person from harassment by the defendant;
- Financial Reporting Order includes for example, requirements to submit a report every six months setting out details of income, assets and expenditure. The Order may include requirements to submit copies of all bank statements, credit card accounts or other documentation detailing financial transactions, including tax returns and business accounts;
- Compensation Order is an order whereby the defendant is required to pay monetary compensation to a victim(s) for any distress, personal injury or financial loss that they have suffered.

5.2.2 Where there is a significant difference between the factual basis on which a defendant pleads guilty and the case contended for the prosecution, the prosecution should seek to establish the facts upon which the court should base its sentence.

5.2.3 Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.

5.3 Financial Powers

5.3.1 In addition to prosecuting traffickers and others who make financial gains from the exploitation of their victims, investigators and prosecutors will, where

appropriate, also disrupt their criminal activity by stripping them of their assets.

- 5.3.2 Offences of MSHT and smuggling are 'lifestyle offences' for the purposes of the Proceeds of Crime Act 2002. This means that the court can assume that all the assets the defendant has acquired over the preceding six years are from crime, unless the defendant is able to prove otherwise. This enables applications to be made to the High Court, where appropriate, to confiscate the defendant's money and remove assets from a defendant following conviction. Applications can be made to the court under the Proceeds of Crime Act 2002 to restrain assets at an early stage of the investigation.
- 5.3.3 Seizure under the Proceeds of Crime Act 2002 is a civil power that allows the police to seize cash where the amount is over £1,000 where they have reasonable cause to believe it has come from crime or is intended to be used in the furtherance of crime.
- 5.3.4 Forfeiture involves the seizure of items used to commit a crime. For MSHT, this includes the power to seize and forfeit land vehicles, ships and aircraft which may have been used to traffic victims.
- 5.3.5 The Proceeds of Crime Act 2002 also creates offences of money laundering. These offences may not involve money, their essence is the movement and use of 'criminal property'.
- 5.3.6 An agreement between the police and the PPS 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 Court as appropriate.

5.4 Unduly Lenient Sentences

- 5.4.1 The Criminal Justice Act 1988 (as amended) gives the Director of Public Prosecutions the power to apply for leave to refer to a sentence that he considers to be unduly lenient to the Court of Appeal. This Act restricts the use of that power to some of the more serious offences tried and sentenced in the Crown Court.⁵²

⁵² <https://www.ppsni.gov.uk/unduly-lenient-sentences>.

5.4.2 The Court of Appeal has held that an unduly lenient sentence is one that falls outside the range of sentence that a judge, taking into consideration all relevant factors, and having regard to sentencing guidance, could reasonably consider appropriate. Sentencing is not a straightforward matter. Every case is different and the sentence appropriate to any case must depend on the particular circumstances of that case. A judge, in sentencing a defendant, takes into account any guidance given by the Court of Appeal, identifies any features that aggravate the offence and any features that mitigate the offence. The judge then decides on a sentence that reflects the need to punish, to deter others, to protect the public and to rehabilitate the defendant.

Annex A: Contact Details

Public Prosecution Service

Policy and Information Unit

Policy and Information Unit
Public Prosecution Service
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9089 7100
Deaf/Hard of hearing (SMS): 07795 675528
Email: info@ppsni.gov.uk (for general enquiries)
complaints@ppsni.gov.uk (for complaints)
reviews@ppsni.gov.uk (for reviews)
Website: www.ppsni.gov.uk

Victim and Witness Care Unit

VWCU - Belfast Office (for Belfast and Eastern Region)
Belfast Chambers
93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9026 4690
Deaf/Hard of Hearing (SMS): 07825 118389
Email: vwcubelfast@ppsni.gov.uk

VWCU - Foyle Office (for Western and Southern Region)
35 Limavady Road
Londonderry
BT47 6LP

Telephone: (028) 7134 0632
Deaf/Hard of Hearing (SMS): 07825 118416
Email: vwcufoyle@ppsni.gov.uk

Belfast and Eastern Region / Headquarters Sections

Belfast Chambers

93 Chichester Street
Belfast BT1 3JR

Telephone: (028) 9054 2444
Deaf/Hard of hearing (SMS): 07795 673927

Western and Southern Region

Foyle Chambers

35 Limavady Road
Londonderry BT47 6LP

Telephone: (028) 7134 0648
Deaf/Hard of Hearing (SMS): 07795 675338

Omagh Chambers

2 Townhall Square
High Street
Omagh BT78 1BL

Telephone: (028) 8224 4319
Deaf/Hard of Hearing (SMS): 07795 831188

Newry Chambers

1 Downshire Close
Newry BT34 1FD

Telephone: (028) 3083 2500
Deaf/Hard of Hearing (SMS): 07795 810114

Police Service of Northern Ireland

65 Knock Road
Belfast BT5 6LE

Telephone: 028 9065 0222 or 0845 600 800
Crimestoppers: 0800 555 111
Website: www.psni.police.uk

Victim Support Northern Ireland

3rd Floor
Annsgate House
70-74 Ann Street
Belfast BT1 4EH

Telephone: (028) 9024 3133
Supportline: 0845 3030900
Email: info@victimsupportni.org.uk
Website: www.victimsupportni.org.uk

Migrant Help

Tel: 02890 315744 (working hours) or 02892 448449 (out of hours)

Website: northernireland@migranthelp.org

Women's Aid

Tel: 02890 2662385

The Rowan Sexual Assault Referral Centre

Telephone: 0800 389 4424 (Freephone 24hrs, 7 days a week)

Website: therowan.net

Barnardo's Northern Ireland

Telephone: 028 90672366

Disability Action

Telephone: 028 90297880

Lifeline (delivered by Contact Youth)

Telephone: 0808 8088000

Nexus Institute

Telephone: 028 90326803 (Belfast)

Telephone: 028 71260566 (Londonderry)

Telephone: 028 38350588 (Portadown)

Telephone: 028 66320046 (Enniskillen)

Email: info@nexusinstitute.org

Website: nexusinstitute.org

Salvation Army

24-hour confidential Referral Helpline: 0300 3038151

Samaritans

Telephone: 028 90664422 or national helpline 08457 909090

Northern Ireland Council for Racial Equality

Telephone: 07710 7673235

The Rainbow Project

Telephone: 028 90319030

Website: www.rainbow-project.org

Law Centre NI

Telephone: 028 90844401

Website: www.lawcentreni.org

Childline

Telephone: 0800 1111

Children's Law Centre

Telephone: 028 90245704

NSPCC National Child Protection Helpline

Telephone: 0808 800 5000

Young Witness Service - NSPCC (NI)

Telephone: 028 94487533

Compensation Services

Telephone: 0300 200 7887

Health and Social Care Board

Website: www.hscboard.hscni.net

Public Health Agency

Telephone: 028 90523737

Website: www.publichealth.hscni.net

Belfast Health and Social Care Trust

Telephone: 028 90960000

Website: www.belfasttrust.hscni.net

South Eastern Health and Social Care Trust

Telephone: 028 90553100

Website: www.setrust.hscni.net

Northern Health and Social Care Trust

Telephone: 028 9446 5211

Website: www.northerntrust.hscni.net

Western Health and Social Care Trust

Telephone: 028 71345171

Website: www.westerntrust.hscni.net

Southern Health and Social Care Trust

Telephone: 028 3833 4444

Website: www.southerntrust.hscni.net

Northern Ireland Prison Service Victim Information Scheme

Telephone: 028 90321973

Website: www.niprvis.gov.uk

Mentally Disordered Offenders Victim Information Scheme

Telephone: 028 90321973

Website: indirect.gov.uk

Probation Board Victim Information Scheme

Telephone: 028 903221972

Email: victiminfo@pbni.gsi.gov.uk

Website: www.pbni.org.uk

Annex B: Legislation and International Instruments

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

Section 1: Slavery, servitude and forced or compulsory labour

Section 2: Human Trafficking

Section 4: Committing an offence with intent to commit offence under section 1 or 2

Schedule 1: Detention and forfeiture of certain vehicles, ships and aircraft used for offences under section 1 or 2

Section 15: Paying for sexual services of a person

Section 16: Offence of forced marriage

Section 22: Defence for slavery and trafficking victims in relation to certain offences

Sexual Offences Act 2003

Section 57: Trafficking into the UK for sexual exploitation

Section 58: Trafficking within the UK for sexual exploitation

Section 58A: Trafficking outside the UK for sexual exploitation

Section 59: Trafficking out of the UK for sexual exploitation

Sections 52 and 53: Causing or inciting and controlling prostitution for gain

Asylum and Immigration (Treatment of Claimants etc.) Act 2004

Section 4: Trafficking into, within, outside and out of the UK for non sexual exploitation

Immigration Act 1971

Section 25: Facilitation of immigration law (smuggling)

Sexual Offences (Northern Ireland) Order 2008

Article 5: Rape

Article 37: Paying for the sexual services of a child

Article 38: Causing or inciting child prostitution or pornography Article 39 Controlling a child prostitute or child involved in pornography

Article 40: Arranging or facilitating child prostitution or pornography

Article 62: Causing or inciting prostitution for gain

Article 63: Controlling prostitution for gain

Article 64: Keeping a brothel used for prostitution

Article 64A: Paying for sexual services of a person

Coroners and Justice Act 2009

Section 71: Holding another person in slavery or servitude or requiring them to perform forced or compulsory labour

Offences against the Person Act 1861

Section 42: Common Assault

Section 47: Assault occasioning actual bodily harm

Section 16: Threats to kill

Section 20: Wounding/Inflicting Grievous Bodily Harm

Section 18: Wounding/Causing Grievous Bodily Harm with Intent

Common law

Kidnap, false imprisonment

Proceeds of Crime Act 2002

Sections 327, 328 and 329: Money laundering

Forgery and Counterfeiting Act 1981

Section 1: Making or controlling a false instrument

Identity Cards Act 2006

Sections 25 or 26: Possession of false identity documents

Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

Article 9: Conspiracy to commit offences here and abroad

Justice (Sexual Offences and Human Trafficking) Act (Northern Ireland) 2022

Section 21: Support for victims of trafficking

Section 22: Defence for slavery and trafficking victims

Section 23: Strategies on slavery and trafficking offences

Section 24: Protective measures for victims of slavery or trafficking

International Instruments

The European Convention on Human Rights (ECHR) was incorporated into UK law by the Human Rights Act 1998

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

Council of Europe Convention on Action Against Trafficking in Human Beings
Palermo Convention on action against Human Trafficking

UN Convention on the Elimination of Discrimination Against Women (CEDAW), ratified by the UK in 1986

United Nations Convention on the Rights of the Child

EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

UN Convention on the Rights of Persons with Disabilities, ratified by the UK in 2009

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the UK in 1984

UN Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), ratified by the UK in 2018

UN Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention)

Annex C: Typology of the Types of Modern Slavery Offences in the UK

The typology is from: A Typology of Modern Slavery Offences in the UK. Home Office Research Report 93. October 2017



Labour exploitation

- 1** Victims exploited for multiple purposes in isolated environments
Victims who are often highly vulnerable are exploited for labour in multiple ways in isolated rural locations. Victims live on offenders' property in squalid conditions, are subject to repeated abuse and are very rarely paid.
- 2** Victims work for offenders
Victims are forced to work directly for offenders in businesses or sites that they own or control (some offenders may be gangmasters). The main method of exploitation is not paying or illegally underpaying victims.
- 3** Victims work for someone other than offenders
Victims are employed in a legitimate and often low-skilled job, with legal working conditions, by an employer unrelated to the offenders. Most or all wages are taken by offenders often through control of the victims' bank accounts.



Domestic servitude

- 4** Exploited by partner
Victims are forced to undertake household chores for their partner and often their partner's relatives. If married, the marriage may have been arranged or forced and the servitude often occurs alongside domestic abuse and sexual exploitation.
- 5** Exploited by relatives
Victims live with and exploited for household chores and childcare by family members, usually extended family. Many victims are children.
- 6** Exploiters not related to victims
Victims live with offenders who are often strangers. Victims are forced to undertake household chores and are mostly confined to the house.



Sexual exploitation

- 7 Child sexual exploitation – group exploitation
- 8 Child sexual exploitation – single exploiter
- 9 Forced sex work in fixed location
- 10 Forced sex work in changing location
- 11 Trafficking for personal gratification

Children are sexually exploited by groups of offenders. This is usually for personal gratification, but sometimes the exploitation involves forced sex work in fixed or changing locations and will include characteristics of types 9 and 10. Offenders frequently transport victims to different locations to abuse them.

Similar to type 7, often involves the grooming of children and transporting them for the purposes of sexual exploitation, although the offending is carried out by one individual.

Victims are trafficked and exploited in established locations set up specifically for sex work. This can include brothels or rooms in legitimate business premises (e.g. massage parlour).

Victims are forced into sex work where the location of exploitation frequently changes. Locations include streets, clients' residence, hotels or 'pop-up' brothels in short-term rented property. Victims are frequently advertised online.

Victims are trafficked to residential sites controlled by offenders and sexually exploited for the offenders' own gratification. Some victims may be confined to the site for a long period of time.



Criminal exploitation

- 12 Forced gang-related criminality
- 13 Forced labour in illegal activities
- 14 Forced acquisitive crime
- 15 Forced begging
- 16 Trafficking for forced sham marriage
- 17 Financial fraud (including benefit fraud)

Victims are forced to undertake gang related criminal activities, most commonly relating to drug networks. Victims are often children who are forced by gangs to transport drugs and money to and from urban areas to suburban areas and market and coastal towns.

Victims are forced to provide labour to offenders for illegal purposes. The most common example is victims forced to cultivate cannabis in private residences.

Victims are forced by offenders to carry out acquisitive crimes such as shoplifting and pickpocketing. Offenders may provide food and accommodation to victims but rarely pay them.

Victims are transported by offenders to locations to beg on the streets for money, which is then taken by offenders. Victims are often children vulnerable adults.

Traffickers transport EU national victims to the UK and sell these victims to an exploiter in a one-off transaction. Exploiters marry victims to gain immigration advantages and often sexually abuse them.

Victims are exploited financially; most commonly their identity documents are taken and used to claim benefits. This type often occurs alongside other types.

Annex D: Indicators that a Person may be a Victim of Human Trafficking⁵³

Sexual Exploitation

- They move from one brothel to another or work in various places.
- They are escorted whenever they go and or return from work and other activities.
- They have tattoos or other marks indicating 'ownership' by the exploiters.
- They work long hours or have few, if any, days off.
- They sleep where they work.
- They live or travel in a group, sometimes with other women who do not speak the same language.
- They have very few clothes.
- They have clothes that are mostly the kind typically worn for prostitution.
- They only know how to say sex-related words in the local language or in the language of the client group.
- They have no money of their own.
- They are not able to show an identity document.
- They are afraid to reveal who is controlling them and lie about their story.
- Their mobile phone keeps ringing when they are out.

Labour exploitation, Domestic Servitude:

- They work too many long hours.
- They are forced to do dangerous work.
- They have low or no salary.
- A bank account may be opened in the victim's name but the victim will have be allowed access to it.
- They depend on the employer for things like work, food, transport and accommodation.
- They are made to pay for tools, food or accommodation and have these costs taken from your wages.
- They have no tax or PRSI contributions and no access to social supports.
- They have no contract of employment.
- They are working without the employment documents required for workers from their country.
- They have their rights in relation to pay and conditions of employment infringed.
- They have no choice of accommodation offered to them.
- They live with the family employing them.

⁵³ https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf.

- They live in groups in the same place where they work, and don't leave that place very often.
- They have no privacy, sleeping in shared and over-crowded spaces.
- They live in unsuitable places, such as in agricultural or industrial buildings like sheds or warehouses.
- They never or rarely leave the house or work place without their employer.
- They are not able to move freely.
- Security measures are in place to keep them at the work place, for example locked doors and windows.
- Their social activities and movements are controlled by their employer.
- They are given only leftover food to eat.
- They are disciplined through fines and threats.
- They are insulted, abused or threatened or suffer violence.
- They don't have basic training and professional licences.
- They work in dangerous conditions, in places with no health and safety notices and or poor quality equipment.
- They are not dressed properly for the work they do, for example they don't have protective equipment or warm clothes.
- Equipment is designed or changed so that children can use it.

Children:

Children who have been trafficked may:

- Have no access to their parents or guardians.
- Look intimidated and behave in a way that does not correspond with behaviour typical of children their age.
- Have no friends of their own age.
- Have no access to education.
- Have no time for playing.
- Live apart from other children in substandard accommodations.
- Eat apart from other members of the 'family'.
- Be engaged in work that is not suitable for children.
- Travel unaccompanied by adults.
- Travel in groups with persons who are not relatives.

If you require any further information about the PPS, or a copy of this document in an alternative format, please contact:

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