The Modern Slavery Act Review

Foreword

> *"This landmark legislation sends the strongest possible signal to criminals that if you are involved in this vile trade you will be arrested, you will be prosecuted and you will be locked up. And it says to victims, you are not alone - we are here to help you."* Theresa May, Home Secretary, 2015

> *"Having turned over the stone and seen what has crawled out it has transformed my view on policing, victims and society… that another person can dehumanise an individual, break them so thoroughly and treat them despicably, like a piece of furniture that can be thrown out when it has served its purpose is incomprehensible. We cannot and must not let it continue."* Senior Police Officer interviewed for this review

The Modern Slavery Act enacted in March 2015 was an important milestone in the fight against slavery and for social justice. It unified and simplified previous legislation and gave law enforcement new powers. It increased sentencing powers and strengthened protections for survivors. It established the first Independent Anti-Slavery Commissioner. And it placed a duty on large businesses to play a part in eradicating slavery from global supply chains.

It is exactly one year since many of the criminal justice provisions in the Act were brought into force by the Government. While the provisions are still bedding in, the anniversary is an opportune time to review the manner in which the provisions are working. In one of her final actions as Home Secretary, Theresa May asked me to do precisely that.

I have been deeply impressed by the commitment of the frontline professionals who have advised me over the course of this review. I am grateful for their support and commitment.

It is striking that every person whose personal or professional life brings them into contact with this appalling crime becomes touched by it. Many become committed, body and soul, to eradicating it. I hope that my recommendations will help all of us to make faster gains in this generational fight to protect the vulnerable and voiceless.

Caroline Haughey

31 July 2016

Executive Summary

Questions addressed by the review

- Is there sufficient awareness of the criminal justice measures contained within the Act?
- How well are the measures in the Act being implemented?
- Are there gaps in the provisions of the Act?
- What recommendations are there to fill any gaps found?

The review's terms of reference and methodology are annexed.

Findings

The Modern Slavery Act has set an international benchmark to which other jurisdictions aspire. All legislation must evolve with time but the Act itself is fit for purpose and our priority should be to maximise the impact of the provisions that came into force a year ago.

One year on, operational agencies are beginning to use the powers in the Act. While slavery remains under-reported, the Act and wider work have raised slavery in the consciousness of the general public and practitioners. The operational response to slavery is improving:

- More victims are being identified: in 2015, 3,266 potential victims were identified and referred for support, a 40% increase on the previous year.
- Better protections are in place
- Increased number of proactive and reactive police investigations
- Increased number of prosecutions and convictions (most still under the old offences)
- Prosecutors are enhancing their understanding of the law and needs of victims through use of the vulnerable witness tools
- At a judicial level awareness is increasing and training is being put in place

But work to translate the Act into real world results is inevitably a work in progress. Despite stand-out examples of good practice, there is a lack of consistency in how law enforcement and criminal justice agencies deal with modern slavery. The stand-out issues are:

- Training for police officers, investigators and prosecutors is patchy and sometimes absent
- Insufficient quality and quantity of intelligence about the nature and scale of modern slavery at national, regional and international level, which hampers the operational response
- Lack of a structured approach in operational agencies to identifying, investigating, prosecuting and preventing slavery, including learning from what works and what does not
- Some complainants not being afforded the vulnerable witness protections available to them during and after the Court process

Recommendations

Modern slavery is a particularly challenging crime to investigate and bring to justice. This was true before the Act came into force and it will continue to be so.

It is therefore imperative that law enforcement agencies provide frontline staff with the right tools, training and processes to do the job. Taking the following steps will help the police, NCA, CPS and other agencies to get the basics right more consistently:

Consistent and coordinated police response

Recommendation 1: Each police force should appoint or identify single points of contact (SPOCs) on modern slavery and exploitation - one at strategic command level one at tactical investigative level.

The strategic command SPOC should be responsible for ensuring effective collection, sharing, exploitation and dissemination of intelligence within the force and with partner organisations like other forces and the NCA and ensuring that the national strategy is implemented. They should be at command rank and should complete training on domestic and international crime patterns, intelligence awareness, gathering and dissemination.

The tactical investigative SPOC should be responsible for being the first point of contact for all exploitation and trafficking cases referred to the police. They will be of a DC, DS or Inspector rank and should complete training on evidence-gathering techniques, current legislation, disclosure issues, NGO and LA awareness, victimology and court presentation.

Recommendation 2: The National Policing Lead and Chief Constables should ensure that Police SPOCs become a dynamic and thriving community of practice that regularly shares good practice and lessons learned. This should include convening quarterly regional SPOC meetings and six-monthly national SPOC meetings to share information, intelligence and best practice. The meetings should also include strategic and tactical leads from NCA, Border Force, HMRC, GLA, CPS and, where appropriate, local authorities and key NGOs like The Salvation Army.

Recommendation 3: The Modern Slavery Threat Group should increase national and regional capability to produce intelligence-based assessments of the national, regional and cross-border threat from modern slavery. More must be done to give strategic decision-makers (eg Ministers, PCCs and Police Chiefs) high quality assessments that will truly influence strategic decisions; and to give law enforcement staff tactical assessments that lead to operations to rescue victims and bring perpetrators to justice. It is recognised that this may require modern slavery to be designated as a high priority crime and / or for dedicated resource to be found.

Training and continuous improvement

Recommendation 4: The Modern Slavery Threat Group should ensure that tailored modern slavery training that has been quality-assured by technical and legal experts is provided more quickly to more frontline staff, prioritising police officers and criminal justice staff. This must be part of a wider training programme, overseen by the Modern Slavery Threat Group, to raise awareness and capability among all frontline staff who play an important role in the operational response to slavery.

Training for police officers should include:

a. Basic training for every police officer on modern slavery and trafficking incorporated into the national policing curriculum. It should cover: victim awareness; basic cultural knowledge; markers for trafficking and exploitation, including those pertaining to people who have come into contact with police for reasons that are not immediately known to be linked to slavery; what the National Referral Mechanism is and what officers should do to make best use of it; awareness of trusted and credible NGOs; and what to do if a defendant raises the Modern Slavery Act s45 defence.

b. e-training for all officers as part of CPD on Modern Slavery and Trafficking to be updated annually and be approved by the College of Policing.

c. Tailored training for SIOs drawing on the experiences of all the police forces, including: use of Joint Intelligence Teams (JITs) and other means to obtain intelligence and evidence from agencies overseas; and use of interim and preventative orders.

d. Police SPOCs should receive the highest standard of dedicated, accredited training on slavery, trafficking and exploitation.

Training for prosecution agencies, lawyers and judiciary should cover:

e. Updated legal guidance on the CPS website to cover the Modern Slavery Act and its associated Orders[1].

f. Judicial College training for all judges (full time and Recorders) on the implementation of Modern Slavery Act 2015 s45.

g. Significantly extended Vulnerable Witness training. It should be made a compulsory part of all criminal bar training, to be completed within five years of call. It should be undertaken by all court advocates within five years in order for them to be permitted to defend or prosecute a case

[1] The guidance on the CPS website does not refer to the Modern Slavery Act and is out of date with regards to advice on the defence for the victims of trafficking.

where the Court deems the victim or defendant to be vulnerable. And Judges appointed to try cases of slavery and trafficking should have completed enhanced Vulnerable Witness training covering cultural awareness, victim empathy and question management.

h. Training for senior charging lawyers in Complex Cases Units should include: cultural awareness of different ethnicities that predominate in trafficking offences; understanding interim orders that can be sought; JITs; International Letters of Request (ILORs) and obtaining third party material.

Recommendation 5: The Modern Slavery Threat Group should establish an online resource centre for SPOCs and specifically approved CJSM account holders working for organisations who play a key role in modern slavery and trafficking cases, including CPS and local authorities. The site should contain all cases investigated and/ or prosecuted under the Act.

The online resource should also contain: eLearning tools and an ability to complete CPD for officers; a directory of SPOCs across England and Wales[2]; a message board to enable fast, seamless sharing of tactical advice.

Police SPOCs and case lawyers who have been granted access to the site should complete short pro formas[3] on each of their cases. If feasible, this online resource could house an intelligence database to which SPOCs could upload data.

Better recording and investigation of offences

Recommendation 6: The Modern Slavery Threat Group should strengthen data collection by disseminating guidance on which cases should be recorded as exploitative or trafficking offences, and by enforcing the use of nationally consistent processes to collect and synthesise data and intelligence from different partners including local authorities.

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[2] Although outside the remit of this review it is encouraged to add both Northern Ireland and Scotland to maximize the benefit of the site.

[3] Police SPOCs should upload data on: the type of exploitation; an outline of the facts of the case; the countries of origin, transit and destination of offenders and victims; notable vulnerability factors pertaining to the victim (eg mental health, economic needs, age); the means by which they were trafficked; the means by which they were exploited (eg force, threats); the outcome (eg charge, trial, legal arguments, sentence and further Orders); and lessons learned. A list of reflective key words will be prescribed to enable an effective search function.

Case lawyers should upload lessons learned from cases, details on experts used and legal arguments raised during the trial.

Recommendation 7: The National Policing Lead and Chief Constables should ensure that all complainants in trafficking and exploitation cases give their statements to police officers who are trained to deal with vulnerable witnesses.[4]

Recommendation 8: The ABE process should be enhanced with a view to improving the evidence produced and the victim's experience. It is recommended that a two-stage process is adopted.

A first interview would be recorded which covers the personal background and getting to know principles of the complainant, which would be disclosed to the defence as unused. A second interview would then recorded: an interview plan would be given to the victim in advance, identifying the areas upon which they will be invited to provide their evidence - who, what, where, why and how - and providing chronological memory pegs to assist in recollection of events (eg leaving school, moving out of family home, arrival in UK). Questions would then be asked in open form to elicit the evidence.

Processing of Court cases

Recommendation 9: Strengthen the role of CPS Complex Case Units in trafficking and exploitation and/ or associated cases. All such cases should be referred to a Complex Case Unit and guidance clarifying to which offences this applies should be disseminated to all charging lawyers and CPS Direct. Each CPS region Complex Case Work Unit should have a senior charging lawyer trained to deal with exploitation and slavery cases.

Recommendation 10: The International Letters of Request (ILOR) request process should be reviewed with a view to identifying means by which such requests can be expedited.

Recommendation 11: A list of advocates who have demonstrated the skills necessary to prosecute trafficking and exploitation offences, derived from the rape list.

Recommendation 12: CPS should develop and maintain a contacts database of approved slavery and trafficking experts so that they can be easily contacted. A bank of anonymised reports by those should be uploaded to the shared site (see above) for easy access.

Recommendation 13: All victims of Modern Slavery Act offences should be treated as vulnerable under the terms of Advocacy Gateway, save and unless a defence application or judicial ruling is made or concession is made by agreement. A ground rules hearing should take place outlining the matters in issue and the topics to form cross examination.

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[4] Statement-taking can be either an s9 statement or a video-recorded interview under ABE principles or as compliant with the jurisdiction where it is being taken from.

Recommendation 14: As part of case management considerations, trial judges should direct the prosecuting advocate to provide a schedule of acts identified from the evidence which found the counts on the indictment. The Defence case statement should in return respond to this schedule. Such a document can then, by agreement and/ or judicial ruling, go before the jury as part of the route to verdict documents.

Recommendation 15: Judicial discretion should be given permitting trial judges to direct the preparation of a report for the victim and/ or the defendant, where appropriate, to assist in ensuring the witness gives the best evidence.

Recommendation 16: During the summing up, the trial judge should direct the jury in terms similar to those articulated in the Crown Court Compendium Part 1 May 2016 Chapter 20- 1 the danger of assumptions.

Recommendation 17: A review of the law on the admissibility of whether a psychologist's diagnosis of a psychiatric injury can be permissible as evidence of an injury for the purpose of Offences Against the Person Act 1861 section 47 and section 20.

Recommendation 18: The Sentencing Council Guidelines should fully reflect the changes made in the Modern Slavery Act and the increase in the sentencing powers available.

Recommendation 19: Update the Crown Court Bench Book to encompass directions on law on Modern Slavery Act.

Referrals and victim support

Recommendation 20: The Modern Slavery Threat Group should ensure that all potential trafficking and exploitation offences and all NRM referrals granted a positive decision are sent to the investigative SPOC within the force and investigated under one remit.

Recommendation 21: The Modern Slavery Threat Group should ensure that all NRM referrals are referred to the police, who should consider investigating and prosecution in all cases, even where the victim has decided not to engage with the criminal justice system.

Recommendation 22: Government should consider steps to increase the quantity and quality of NRM referrals from NGOs. This may be achieved by requiring that NGOs who are in receipt of public monies and/ or acting as a referral or recipient body from the police or local authority should disclose material relevant to an investigation as so deemed by the SIO; comply with a chain of evidence continuity policy; and apply an open accounts policy.

Recommendation 23: The Modern Slavery Threat Group should increase use of the option to extend the 45-day period of rest and recovery for victims of slavery by training all SPOCs to understand under what circumstances it would be appropriate to apply for an extension; and making it possible for command SPOCs to apply for an extension on behalf of investigative SPOCs.

Recommendation 24: Government should formalise and clarify the duties of local authority agencies to support the victims of slavery and trafficking once they have left the National Referral Mechanism service.

Policy considerations

Recommendation 25: In respect of s45 of the Modern Slavery Act, which provides for a defence for slavery or trafficking victims who commit an offence, consideration should be given to clarifying and/ or enhancing the term 'direct consequence', and to clarifying the process by which s45 is raised and applied.

Recommendation 26: Consider the definition of 'exploitation' in the Act, whether there would be merit for amending the Act to introduce a standalone offence of exploitation and whether Schedule 1 offences should include other associated exploitative offences.

Recommendation 27: A Law Commission report should be undertaken on false imprisonment or an alternative offence of unlawful detention. There is a growing perception that the common law definition of false imprisonment no longer reflects the means by which detention of another can occur.

Recommendation 28: Consideration should be given to creating a Visa order preventing the offender for applying and or sponsoring another person's entry into the UK and/ or making it mandatory that the defendant disclose the relevant conviction on any sponsoring/ supporting visa application.

Recommendation 29: Consideration should be given to enhancing police powers of detainment for own protection. This would be limited to offences under the Modern Slavery Act, for a limited period, and could only be sanctioned by an officer ranked Detective Chief Superintendent or above.

Context: The challenges of achieving justice for modern slavery victims

Modern slavery is a particularly difficult crime to detect, investigate and bring to justice because of the nature of the crime and the impact that it has on survivors. There are several reasons for this.

Challenges of identifying the victim and detecting the crime

Slavery is a clandestine crime – victims are often either hidden or deliberately isolated from society physically and/ or psychologically.

Physical detention in its literal translation is easy to recognise but the invisible handcuffs of psychological imprisonment are far harder to identify. Psychological imprisonment can manifest itself in a variety of ways:

- removal and detention of travel and identification documents
- confiscation of mobile phones
- denial of unfettered access to communication with family or friends
- accompanying the victim at all times outside of the premises
- deprivation of money
- threats made about family or friends if the victim fails to comply with the criminals directions
- Victims of forced labour can be reluctant to report the offending they are being subjected to or even acknowledge its existence.
- Many victims trafficked to the UK consider the appalling conditions of their servitude in this country to be preferable to the alternatives in their country of origin.

As a result of their treatment, their background and or their pre–existing vulnerabilities, victims are not always willing or able to cooperate with the authorities.

The result is that many victims are in effect "held in plain sight" – having the appearance of living in society but in fact having little or no freedom.

Challenge of rescuing victims and bringing perpetrators to justice

A lack of cultural awareness of the victim's background means that safeguarding professionals can often miss the indicators of exploitation.

This can be a resource-heavy area of investigation - large demands on officer time, victims who need careful handling and attention so that each part of their allegation is independently corroborated where possible.

Human beings who are treated as a commodity are rarely 'used' for a single purpose. The offending associated with them can include: sham marriages; identity fraud; false benefits claims; rape; false imprisonment; violence; and a range of other crimes.

The evidence of those crime is often voluminous and the matters to be considered by the jury challenging. Witness testimony presentation can be lengthy and intricate and hampered by communication or translation issues.

Victims often have multiple vulnerabilities: mental health issues, learning difficulties, financial desperation, alcohol or drug dependency. Multiple Achieving Best Evidence (ABE) interviews are often needed to extract sufficient evidence from them and some withdraw from the criminal justice process before it has been completed.

Many victims have a fear of authority figures and, or, come from cultures where those in uniform or associated with government or law enforcement have a negative reputation. The police often have to ensure that all contacts with the victim are recorded in detail – to protect both officer and victim from allegations from financial incentive or improper relationship.

Cases involving trafficking across borders require investigators and prosecutors to rely on data from organisations based overseas, which can be time-consuming and costly.

Investigators and prosecutors often find it hard to distinguish between victim and perpetrator. Many middle-ranking exploiters started as victims themselves - identifying those victims and balancing their current criminality with what they have been subject to is particularly difficult. There have been occasions when victims were improperly charged as defendants - slipping through the gaps because they were too frightened to tell their legal representative or speak out against the perpetrators.

Cases that do result in a charge can be highly challenging for the lawyers. The victims, due to their vulnerability, are among the most problematic to present. Distilling the evidence from ABE interviews into jury and judicial friendly formats can be time-consuming.

Witnesses are often reluctant to assist or present poorly, suffering from Stockholm syndrome or other psychiatric /psychological conditions and unable to capably articulate the extent of the way in which they have been treated. The very vulnerabilities that led to their exploitation often undermine their credibility as a witness.

Judges face multiple difficulties in dealing with such trials. Tasked with ensuring fairness to both victim and defendant they must allow the defendants case to be put whilst preventing inappropriate questioning of the victim.

The vulnerability of the victim and the frequent involvement with third party agencies eg social services or Non-Government Organisations (NGOs) lead to multiple challenges. NGOs and state agencies quite properly take accounts from the victim in either formal or informal settings in order to progress relevant applications - eg housing, benefits, immigration status etc. leaving a disclosure trail that must be explored.

Early impact of the Modern Slavery Act 2015

It is apparent from the data and the interviews conducted during this review that the Modern Slavery Act has already had a positive impact on the response to slavery, and that it could have a far greater impact if used to its full potential. No legislation can overcome the challenges listed above but it is making a difference.

Operational performance

There has been an encouraging increase in the number of slavery-related prosecutions, convictions and victim referrals, albeit against a low base:

- The police in England and Wales recorded 884 modern slavery crimes between April 2015 and March 2016. Modern slavery was introduced as a separate crime recording category in April 2015 so it is not possible to compare this to pre-Act data.

- Modern slavery remains a largely hidden crime however: Government estimates that there were between 10,000-13,000 potential victims of slavery in the UK in 2013.

- The number of prosecutions for modern slavery offences is increasing against a low base. In 2015, 117 offenders were prosecuted for modern slavery offences in the UK, 19% higher than the 98 prosecuted in 2014.

- A higher number of modern slavery offenders may however be prosecuted or convicted for other offences. Between January 2015 and June 2016, approximately 340 cases have been referred to the CPS that concerned trafficking and exploitation; approximately 215 of those were charged with convictions in approximately 75% of those cases.

- A total of 289 offences were prosecuted in 2015: 27 offences under the Modern Slavery Act (cases ongoing) and 262 under previous slavery and trafficking legislation.

Table: Selected offences prosecuted in the magistrates' Court and convicted and sentenced at all courts, England and Wales, 2014 – 2015[5][6]

	2014		2015	
	Prosecuted	Convicted	Prosecuted	Convicted
Offences under previous slavery and trafficking legislation				
Slavery, servitude and forced labour	68	8	79	23
Human trafficking for sexual exploitation	110	43	113	76
Human trafficking for non-sexual exploitation	75	57	70	14
Offences under the Modern Slavery Act 2015	**0**	**0**	**27**	**0**
Total (all slavery and trafficking offences)	**253**	**108**	**289**	**113**

- The Modern Slavery Act introduced civil Slavery and Trafficking Prevention and Risk Orders to restrict the activities of modern slavery offenders.

- As of 31 March 2016, 16 Slavery and Trafficking Prevention Orders (STPOs) had been made on sentencing in the Crown Court under s14 of the Act[7].

- Nine Slavery and Trafficking Risk Orders (STROs) had been applied for on application to the Magistrates' Court, of which three had been made. Of the remaining six, two were refused, one was withdrawn and three adjourned.

- There have been year-on-year increases in the number of potential victims of modern slavery identified and referred to the National Referral Mechanism (NRM). In 2015, 3,266 potential victims were referred to the NRM, a 40% increase compared to the previous year.

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[5] Source: Justice Statistics Analytical Services - Ministry of Justice. Further breakdown of data underpinning 'Criminal Justice Statistics 2015' National Statistics publication. Every effort is made to ensure that the figures presented are accurate and complete. It is important to note however that this data has been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure that data collection processes and their inevitable limitations are taken into account when those data are used.

[6] The figures given in the table on court proceedings relate to all offences for which all defendants are proceeded against and, as relevant, found guilty of. When a defendant has been proceeded against or found guilty of two or more offences, each of the offences is counted.

[7] Source: HMCTS management information. The figures on STPOs and STROs have been extracted from live administrative data systems and have not been verified to the same standards as National Statistics.

It is likely that these increases are at least partly attributable to the strong recent focus on modern slavery, including the new Act.

That said, it is too early to use the data for the number of cases investigated and or referred for charge under the new legislation as an indicator of the efficacy of the Act. The new offences only came into force a year ago and, given the length of time to investigate and bring to justice slavery cases, many of the cases referred to charge have been under the old legislation and the cases that have been brought forward under the new offences are still underway.

Operational capabilities and culture

Many of those interviewed as part of the review commented that the signal sent by the Act has raised the profile of modern slavery across many parts of law enforcement. It has resulted in the formation of the Modern Slavery Threat Group.

The Group, chaired by Chief Constable Shaun Sawyer brings together operational agencies and leads on the operational response to slavery. It has prioritised work on improving intelligence, strengthening training and improving operational tasking at national and regional level. The Group should accelerate this work so that the Act is used to its full potential.

More police forces have dedicated slavery and trafficking units. And modern slavery offences are more often (though not universally) treated as serious crimes rather than - as used to be the case with labour exploitation offences - a civil or employment law matter. Law enforcement staff have also welcomed the clarity brought by the new offences, which have made it easier to ask for charging advice from the prosecution authorities.

<u>Areas for improvement</u>

Consistent and coordinated police response

Many police officers who were interviewed for this review were notional "single points of contact" for trafficking and exploitative offending. Most had little or no direct training in modern slavery and trafficking. Many came from a child exploitation or public protection background. Others had worked to tackle organised crime. All stated that modern slavery was the most complex and challenging of areas to deal with. And all were appalled at what they had found. As DI Bristow from Cambridgeshire Police observed:

> *"Having turned over the stone and seen what has crawled out… it has transformed my view on policing, victims and society – that another person can dehumanise an individual, break them so thoroughly and treat them despicably, like a piece of furniture that can be thrown out when it has served its purpose is incomprehensible. We cannot and must not let it continue."*

No officer, prior to becoming a SPOC in this field, had received dedicated training. Many felt hampered by a lack of information and resources from which to learn. There is little consistency across England and Wales in the types of resources available to police this type of criminality. Each force will have some different requirements but there is an unmet appetite for codification and formalisation of knowledge, experience and tools.

Many felt that they had had to learn on the job. Although they had benefited from NCA involvement on a tactical level and for setting up reception centres, this was often limited to the initial day of action or rescue of the victims. There was an appetite for more authoritative and enduring guidance on issues such as: identifying skilled people to take first accounts; prioritising avenues of corroborative investigation; which agencies could be relied upon to support the victim; how to utilise the National Referral Mechanism; and how to make the most of the capabilities of the NCA.

There is also a division in how trafficking and exploitation cases are dealt with. In some forces, EU victims are dealt with by the CID trafficking unit and the non-EU citizens by immigration agencies. In one region where this was occurring there had been no referrals of allegations by non-EU victims to the police for further investigation and or to the CPS for possible charge. Trafficking has no geographical boundaries and allocating investigations based on notional passport derivation of offender or victim ignores the reality of the criminality.

Moving towards a more consistent, mainstreamed response to modern slavery requires a more standardised and professionalised approach to SPOCs, training and continuous improvement.

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The strategic command SPOC should be responsible for ensuring effective collection, sharing, exploitation and dissemination of intelligence within the force and with partner organisations like other forces and the NCA and ensuring that the national strategy is implemented. They should be at command rank and should complete training on domestic and international crime patterns, intelligence awareness, gathering and dissemination.

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learned. This should include convening quarterly regional SPOC meetings and six-monthly national SPOC meetings to share information, intelligence and best practice. The meetings should also include strategic and tactical leads from NCA, Border Force, HMRC, GLA, CPS and, where appropriate, local authorities and key NGOs like The Salvation Army.

At a strategic level, there is some knowledge of trends and patterns in trafficking and exploitation cases but this is less developed than for other serious crime types. The NCA's responsibility on serious and organised crime, including human trafficking and exploitation, means that it has a critical role to play in ensuring that high quality strategic and tactical assessments are produced, facilitated by good intelligence flows between partners. Its national footprint and resources coupled with its Border Policing Command mean that it is a hub of intelligence gathering and dissemination to the regional police forces.

On a regional level, police forces notionally work within their own geographical area with information and intelligence sharing occurring within that – this does not, it is acknowledged by those who were interviewed, reflect the trends and patterns of trafficking and exploitation that are occurring. Victims can be kept in one region and then trafficked around that region and into others being moved from one source of labour to another. The rapid movement of the victim from one location to the other, the transient nature of the work in which they are being exploited, the informal nature of it[8] and the high turnover of workers make it difficult to gain a true intelligence picture.

Some forces are currently significantly better equipped to address intelligence-sharing challenges than others. There was real disparity in approach – within the same region, some forces had formally established channels between neighbouring counties and forces had not. Communication between forces was patchy, resulting in missed opportunities to collect and use important intelligence.

Many police forces sought informally to build connections between officers who were the single point of contact in trafficking and slavery in other forces. More formal and effective arrangements are needed so that police officers can more easily obtain a full intelligence picture on high risk safeguarding cases.

The Police National Database (PND) is a useful resource but does not on its own meet the requirements of responding this particular field of criminality. The nature of the intelligence is often localised and informal and the links between accused and or victims hard to establish through use of multiple names, forged identity documents, and the exploitation taking place in different forms and across multiple regions.

The NCA acts as a conduit for intelligence gathering and passes it down the chain to the appropriate police force for further consideration and action. There still remains, however, a lack of coordination in this field. Single police forces,

[8] Cash in hand businesses with little record keeping

despite their efforts, are still not fully availed of the offending landscape. This is not due a lack of effort or intention but rather a lack of consistency in approach to the information accumulation and understanding. The outcome is a fragmented picture of offending.

Forces valued aspects of the tactical advice they received from the NCA UK Human Trafficking Centre (UKHTC) but felt that legal advice - as well as policing guidance during searches and investigations - was also needed on evidence recovery, flagging up a defendant who may be a potential victim, maintenance of sterility between complainants and similar issues.

On a regional level some forces have established excellent working relationships with local authorities and other stakeholders. These police forces have encouraged sharing of intelligence and information to great effect with regular meetings permitting the creation of a joint strategic approach. Such stakeholders include fire authorities who undertake regular inspections of manufacturing premises where large scale low skill labour is used – an area that is ripe for labour exploitation - and who can pass on concerns of what is observed. Also included are children's homes, local council housing inspection teams, NGO's, healthcare professionals and those involved in education etc.

The contribution these stakeholders make when such a cohesive network is in place is immeasurable. Often these stakeholders are the first point of contact for a victim who whilst reluctant to talk to the police will be more forthcoming with an NGO. The victim may not even wish to assist the police but the information on their particular offending is vital in ensuring that the complete picture of criminality is obtained. Local authorities can often take remedial action utilizing civil court orders and other interventions as a means of safeguarding the victim and or monitoring the accused.

Recommendation 3: The Modern Slavery Threat Group should increase national and regional capability to produce intelligence-based assessments of the national, regional and cross-border threat from modern slavery. More must be done to give strategic decision-makers (eg Ministers, PCCs and Police Chiefs) high quality assessments that will truly influence strategic decisions; and to give law enforcement staff tactical assessments that lead to operations to rescue victims and bring perpetrators to justice. It is recognised that this may require modern slavery to be designated as a high priority crime and and/ or for dedicated resource to be found.

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The frontline staff who have been involved in dealing with modern slavery cases – and there is a growing number of them – have built up valuable knowledge and experience, and demonstrate a strong desire to share their knowledge and continue to develop their own. Informal knowledge-sharing is taking place, often without support or recognition. This risks losing valuable insights.

The CPS lawyers spoken to during this review displayed commitment to enhancing their knowledge in this field. Few had had any training prior to undertaking their first cases in this area of criminality. Many observed that they would have benefitted from having a single archived resource to be able to access with up-to-date case law, recent cases in the Crown Court and a more informal access to lawyers who had undertaken such cases.

Recommendation 5: The Modern Slavery Threat Group should establish an online resource centre for SPOCs and specifically approved CJSM account holders working for organisations who play a key role in modern slavery and trafficking cases, including CPS and local authorities. The site should contain all cases investigated and/ or prosecuted under the Act.

Better recording and investigation of offences

Recording of offending data is a complex issue. Many slavery victims are reluctant to speak up, and even when they do existing recording practice can make it difficult to log the range of other offences with which slavery offences are often associated, including: controlling prostitution; child sexual exploitation which can be prosecuted by sexual offences; sexual assault; dishonesty offences; and immigration offences. This is a failing recognised by the Independent Anti-Slavery Commissioner in his strategic report for 2015 – 2017.

The current approach taken by the Crown Prosecution Service (CPS) appears to have addressed this to some degree by flagging up associated offending and accommodating that within their statistics. Cases with an exploitation/ trafficking element are considered within the same remit as those cases that are charged with Modern Slavery Act offences.

Recommendation 6: The Modern Slavery Threat Group should strengthen data collection by disseminating guidance on which cases should be recorded as exploitative or trafficking offences, and by enforcing the use of nationally consistent processes to collect and synthesise data and intelligence from different partners including local authorities.

Police officers investigating modern slavery face an arduous task. The increase in reported offending is dramatic. While this is a desirable outcome, many of those who participated in the review felt ill-equipped to deal with the surge.

A number of forces use Child Sexual Exploitation (CSE) officers already embedded within the force to manage the spike in modern slavery cases. These officers bring experience of interviewing vulnerable witnesses, and pre-existing relationships with local authorities and other partners. They were also

experienced at dealing with third party disclosure and had established enhanced relationships with agencies, enabling easier access to data.

Officers with CSE training were not, however, always equipped with the knowledge to deal with labour exploitation issues, technical evidence or the financial side of offending. Training is disparate and inconsistent.

Recommendation 7: The National Policing Lead and Chief Constables should ensure that all complainants in trafficking and exploitation cases give their statements to police officers who are trained to deal with vulnerable witnesses.

The process of statement-taking from vulnerable victims is also of concern. ABE guidelines have been in force since 2007 but current practice does not sufficiently take into account the particular needs of vulnerable victims. The "getting to know" element of the interviews can take several hours and can be interwoven with the assertions salient to the allegation. This makes presentation to the jury long winded, complex and costly, and often leaves the witness confused and overwhelmed by the sheer volume of material. Inexperienced interviewers often ask leading as opposed to open questions rendering some relevant answers inadmissible before the court, and an absence of structure and planning hampers the overall presentation of the case.

Recommendation 8: The ABE process should be enhanced with a view to improving the evidence produced and the victim's experience.

The Crown Prosecution Service were the main prosecution agency interviewed for the purposes of this review. Regions across the country were spoken to and particularly assistance was gained from the Policy Directorate.[9]

As with the investigative bodies spoken to there was a universal desire to see the Act implemented to its full capacity. The Act was welcomed for locating the main legislation in a single Act and it was collectively agreed that the new sentencing tariffs were necessary and vital in reflecting the seriousness with which this criminality is viewed as well as having a deterrent effect.

The CPS have taken a two pronged approach on addressing the Act and its ramifications. The DPP has publically supported information sharing between competent prosecution authorities in the fight against this type of offending.[10] A commitment was given to ongoing education and learning and implementation of good practice.

[9] Pam Bowen CBE, Senior Policy Adviser, CPS.

[10] On 26th February 2016 the DPP, together with Scotland's Lord Advocate and Public Prosecutor for Northern Ireland, signed up to an action plan committing their respective organisations to work together to respond to the changing nature of trafficking around the world.

On a more localised level there has already been training courses run by various departments within the CPS. The Organised Crime Division, London ran a two day course in January 2015[11] to educate lawyers within the division on the Act covering investigations, victim awareness, trial preparation, international evidence gathering, expert evidence, financial investigations and working with other agencies.

There is a plan to roll out a nationwide education scheme on Modern Slavery led by the Policy Directorate later this year.

The CPS are responding proactively to a growing area of criminality and their data gathering reflects a significant year on year increase in the number of cases presented to them for charge as well as in those charged and brought to trial.

Approximately 340 cases have been referred to the CPS between January 2015 and the end of June 2016 that concerned trafficking and exploitation with approximately 215 being charged with convictions in approximately 75% of those cases.

Convictions are increasing in line with the increase in cases being prosecuted and the prosecutors spoken to both trial advocates and case and charging lawyers agree that jury perceptions were changing particularly towards the victims of sexual exploitation in the sex worker industry.

Despite the growing education there are still significant gaps in the effective prosecutions of trafficking and exploitation cases. Prosecutors and investigators who were interviewed during the review reported that a lack of understanding of the victimology and a parallel lack of understanding of the law led to poor evidence gathering and subsequently poor trial presentation. If either the investigator or the prosecutor are not fully aware of the law and its implementation or is unfamiliar with the unique factual matrices that attach to this type of offending then the result was inevitably poor case presentation and a disservice to the victim.

Police officers gave mixed reports of their experience of working with CPS on modern slavery cases. Where the lawyer, even if not previously exposed to this type of offending, engaged with the officer the effect was a joint learning curve and mutual support. Officers commented on the willingness of CPS lawyers to 'think outside the box' and suggest charges that would not otherwise have been considered; to look at alternative means of obtaining evidence; and to consider pre-emptive legal arguments. In these instances, Officers felt that the case had had a proper and fair review and were confident in the decisions made, even if the case was ultimately not charged or unsuccessful.

Where the lawyer had not been trained in this specific area of the law or was unfamiliar with the Act and/ or reluctant to engage with it, relationships broke

[11] Human Trafficking Training Course organised by Ruona Iguyovwe, Organised Crime Directorate, CPS.

down. This occurred almost exclusively in labour exploitation cases with officers meeting hurdles as to charge, lawyers viewing complainant evidence in isolation without taking into account the double layer of vulnerability and not giving proper weight to corroborative evidence, not understanding cultural norms or failing to assist in obtaining international evidence by JIT or ILOR. There was also some delay in obtaining responses from lawyers to police requests for guidance, which led to officers being reserved in undertakings they could give to victims and undermined victims' confidence in the system.

Police officers said they relied heavily on early CPS advice, particularly in the proactive investigations. The benefits of advice from an experienced and trained lawyer were enormous both from an investigative view and on cost. Early intervention led to more selective evidence gathering, better defendant identification, better understanding of the material required to support a charge and exposure to avenues of enquiry otherwise unavailable or not considered such as JITs or ILORs.

Officers unanimously requested a single point of contact lawyer in the regional unit who was training and familiarised in the Modern Slavery Act who they could obtain guidance and advice from.

It is to be commended that it is national CPS policy that all trafficking and exploitation cases[12] are referred to the Complex Case Unit (CCU). Theoretically this ensures that a lawyer with experience in international evidence gathering, voluminous and complex cases will be the reviewing lawyer. In practice, the policy is not always followed: there have been occasions when this lawyer was inexperienced or lacked knowledge of the Modern Slavery Act and associated offending; and there were reported instances of cases falling through the gaps and being prosecuted by the Crown Court / Borough teams instead of the CCU.

Recommendation 9: Strengthen the role of CPS Complex Case Units in trafficking and exploitation and/ or associated cases.

Trafficking and exploitation cases regularly involve cross-border and/ or international evidence. The evidence can be primary victim evidence - a further identified possible complainant - or corroborative. Unless a JIT has been effected, obtaining this evidence can be slow with ILOR being detailed in its specifics in order to ensure admissibility of the evidence. Speed of response depends on the jurisdiction being requested and length of time it takes for material to be returned varies widely. There is some reluctance to apply for ILOR pre-charge despite the knock-on effect on trial timetabling and preparation.

Recommendation 10: The International Letters of Request (ILOR) request process should be reviewed with a view to identifying means by which such requests can be expedited.

Court advocates are under an obligation to ensure that they are experienced enough

[12] Not necessarily charged under the Act but also with associated offending

to undertake the case in which they are instructed. Modern slavery cases have an added layer of complexity with their victims and large amounts of evidence.

Advocates are expected to be familiar with the Advocates Gateway toolkits on witnesses[13] and to be able to deploy them. With the implementation of the Youth Justice and Criminal Evidence Act 1999[14] provisions on special measures, all trial advocates should be familiar and experienced with calling witnesses over live link, behind screens etc.

The victim should always be afforded the benefit of proper, fair questioning without any disadvantage to the defendant. The increasing use of intermediaries reflects a growing acknowledgement that with careful, controlled questioning even the most vulnerable of individuals can provide a useful account.

Recent Court of Appeal authority supports the principles of "protected questioning" of the witness:

- No repeated questions
- Short, single-strand questions i.e. one matter raised in the question at a time
- Structure to the questions
- Focused questions on the matters in dispute
- Reduction in the use of leading questions

The Court of Appeal adopts this approach too:

> *"The judge had a duty to ensure she (the victim) was treated fairly at the same time as ensuring that the defendants had a proper opportunity to challenge the evidence."* [15]

And in the earlier authority:

> *"The judge has a duty to control questioning. Over-rigorous or repetitive cross-examination of a child or a vulnerable witness must be stopped. In a multi-handed trial the judge must ensure that the witness is treated fairly overall, and not asked questions on the same topics, to the same end, by each and every advocate. Advocates must accept that the courts will no longer allow them the freedom to conduct their own cross-examination where it involves simply repeating what others have asked before, or exploring precisely the same territory. For these purposes defence advocates will now be treated as a group and, if necessary, issues divided amongst them, provided, of course, there is no unfairness in so doing."*[16]

The increasing number of prosecutions in this area and the insight that measured, directed cross examination achieves better evidence for both parties means that it is incumbent on all advocates to be trained to do so.

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[13] http://www.theadvocatesgateway.org/toolkits

[14] Part II

[15] R –v- Sandor Jonas [2015] EWCA Crim 562 No. 2014/02732/C3 see also R v Lubembo and Pooley [2014] EWCA Crim 2064

[16] R v Lubembo and Pooley [2014] EWCA Crim 2064

The Criminal Procedure Rules and good trial management encourage a ground rules hearing setting out the parameters of questioning and HHJ Rook QC is drafting a training programme for the Criminal Bar on questioning of vulnerable witnesses. While it is compulsory for advocates who wish to prosecute rape and other serious sexual offences cases to complete a vulnerable witness training course, there is no obligation on defence practitioners to do the same.

The disparity in approaches ironically results in the defence who are under no obligation to receive training having the most exposure to vulnerable witness questioning, because often a vulnerable prosecution witness will have given a pre-recorded video interview.

The growing number of cases being prosecuted under this Act and under the old legislation has proved challenging for Crown advocates. The demand for experienced practitioners is increasing. Officers, CPS lawyers and Judges alike have all observed that prosecuting such cases is uniquely challenging. Unlike a rape or other sexual assault case - where the focus is on the immediate sexual offending - in a trafficking and or exploitation case sexual offending may appear in some form of the offending, but so too may fraud and violence. The trial advocate will need to be availed of the skills of a sex prosecutor but with the capacity to move between offences.

In the nascent years of the Act there will invariably be a large number of cases in the Court of Appeal seeking to test law and explore definitions and terms. Vulnerable witnesses who have (on the Crown case) already been exploited will be subject to cross-examination and challenges to their credibility. In order to ensure that their evidence is given in the best possible light the Crown advocate will need to be robust enough to challenge other court participants. Knowledge of international law and its application will assist given the volume of foreign material used.

Recommendation 11: A list of advocates who have demonstrated the skills necessary to prosecute trafficking and exploitation offences, derived from the rape list.

Recommendation 12: CPS should develop and maintain a contacts database of approved slavery and trafficking experts so that they can be easily contacted.

Recommendation 13: All victims of Modern Slavery Act offences should be treated as vulnerable under the terms of Advocacy Gateway, save and unless a defence application or judicial ruling is made or concession is made by agreement. A ground rules hearing should take place outlining the matters in issue and the topics to form cross examination.

The obligation on the trial advocates is to ensure that only relevant evidence that is easily understood goes before the jury. The facts behind exploitation cases can be complex and convoluted and take significant time to present. This causes distress to the victim and complicates the summing up process for the judge. There is a growing trend in complex multi-count indictments for the prosecution

advocate to identify the 'acts' which support the offence charged and this is to be commended. The defence advocate and defendant benefit from knowing what is specifically alleged and can address their defence case statement accordingly, narrowing the issues of disclosure to be explored and distilling the matters in issue for the jury in line with good court practice.

Recommendation 14: As part of case management considerations, trial judges should direct the prosecuting advocate to provide a schedule of acts identified from the evidence which found the counts on the indictment. The Defence case statement should in return respond to this schedule. Such a document can then, by agreement and/ or judicial ruling, go before the jury as part of the route to verdict documents.

Recommendation 15: Judicial discretion should be given permitting trial judges to direct the preparation of a report for the victim and/ or the defendant, where appropriate, to assist in ensuring the witness gives the best evidence.

Recommendation 16: During the summing up, the trial judge should direct the jury in terms similar to those articulated in the Crown Court Compendium Part 1 May 2016 Chapter 20-1 the danger of assumptions.

The Act does not purport to contain a section to address every criminal act to which a victim of exploitation could be exposed. This review however has enabled consideration to be given to the other type of offences with which alleged exploiters are sometimes charged. The law has long recognised that Offences Against the Person Act 1861 s47 (assault occasioning actual bodily harm) and s20 (assault occasioning grievous bodily harm) can manifest themselves as a psychiatric injury such as post-traumatic stress disorder[17]. Currently the case law requires such diagnosis to be made by a psychiatrist, yet under the NICE a diagnosis for treatment purposes can be made by a psychologist.[18]

Recommendation 17: A review of the law on the admissibility of whether a psychologist's diagnosis of a psychiatric injury can be permissible as evidence of an injury for the purpose of Offences Against the Person Act 1861 section 47 and section 20.

The Modern Slavery Act 2015 raised the sentence for slavery and exploitation offences from 14 years to life and came into force in July 2015. The sentencing council guidelines which currently apply came into force in 1 April 2014 and set the offences against a background of a maximum sentence of 14 years. The guidance is only focused on sexual offending, the guidance given does not reflect

[17] R v Ireland; R v Burstow [1997] 3 WLR 534

[18] The Law Commission Discussion Paper on provisional proposals for reform of the defences of insanity and automatism, based on lack of capacity. (published July 2013) proposes that psychological evaluations for purposes of the insanity defence should be allowed.

the sophisticated offending that is now occurring, the multiple victims involved, the scale of the commercial enterprises and the degree of exploitation that is occurring and slavery, domestic servitude and forced labour offences.

Recommendation 18: The Sentencing Council Guidelines should fully reflect the changes made in the Modern Slavery Act and the increase in the sentencing powers available.

Crown Court Judges are often compelled to sum up cases with complex facts and untested law, due to the absence of certainty in the law and the limited availability of case law. This invariably leads to confusion. Should the proposed recommendation on an "issues" document be implemented and the document go before the jury by joint agreement of the parties, it may assist in removing some of that confusion. There is merit however in having specific directions provided in the Crown Court Bench book dealing with the law on section 1 to section 3.

Recommendation 19: Update the Crown Court Bench Book to encompass directions on law on Modern Slavery Act.

Referrals and victim support

The number of referrals to the NRM has increased significantly and Police officers praised The Salvation Army for its support in evidence gathering and in fulfilling disclosure obligations. Record keeping of victim interaction was made readily available and the support provided during the 45 days period appeared to be appropriate.

A concern articulated across the police forces was the notionally short period of time available under the NRM – as one officer observed "45 days within the NRM system is not sufficient time to decompress 10 years of incarceration." There was inadequate awareness of the capacity to seek to extend the time a victim could remain in the NRM and many observed that once the 45 days had expired a victim may find themselves on their own with limited support.

This resulted on occasion with officers in the invidious position of being able to do little more than recommend charities to homeless victims for fear of being accused of incentivising the victim to give evidence at trial. Only a very small number of the officers spoken to during the review were aware of the ability to extend the NRM from the 45 days. Such extension can be achieved on the application of the support provider to the NRM and is reviewable at regular intervals.

A pilot scheme is taking place in South West England and West Yorkshire[19] for reducing the time period of assessment and approval in the NRM. Non-participating police forces observing this pilot were fulsome in their praise of the

[19] National Referral Mechanism Review and Pilots, p.16 Victims of Modern Slavery Competent Authority Guidance, Home Office, 21st March 2016

concept of a decision being made within 48 hours and those participating in the pilot were satisfied with the review process.

The large number of first responders identified under the Act has played a significant role in the increased referrals to the NRM but concern has been raised about the gap between the number of referrals and the number of cases that are being brought to police attention. It is acknowledged that the NRM form has a box that allows a victim to choose not to participate in a police investigation[20]. A pilot scheme in Wales where all NRM referrals are passed onto the police has been viewed positively by the officers concerned.

This pilot scheme also has significant advantages for those individuals who are arrested and then assert that they are a victim of trafficking or exploitation. The assessment can be addressed rapidly whilst having a significantly reduced impact on the investigation of the original matters for which they were arrested.

It is observed that that there are a variety of reasons why a victim may not wish to pursue a police complaint. The fact that they choose not to should not preclude the police from choosing whether or not to investigate and prosecute those responsible. Cases can be investigated and prosecuted without complainant witnesses. As officers observed, documentary evidence such as flight manifests and booking details can demonstrate the movement of persons from area to another whilst banking documents and employer evidence can support an allegation of labour trafficking or brothel notices and searches of trafficking for the purposes of sexual exploitation.

It is as important to protect other potential victims from the criminals as it is to understand the need for a victim not to participate in the criminal justice system.

Recommendation 20: The Modern Slavery Threat Group should ensure that all potential trafficking and exploitation offences and all NRM referrals granted a positive decision are sent to the investigative SPOC within the force and investigated under one remit.

Recommendation 21: The Modern Slavery Threat Group should ensure that all NRM referrals are referred to the police, who should consider investigating and prosecution in all cases, even where the victim has decided not to engage with the criminal justice system.

The NGOs are a vital and intrinsic part of the system - picking up the slack when a victim has been emancipated, offering support beyond the capacity of the NRM, providing care and support of a specialist nature appropriate to the victim assisting officers in targeting the offenders.

Nearly all officers across the investigation bodies spoke highly of the NGOs who are involved in this field and in particular The Salvation Army. Many forces have

[20] Which can happen for a variety of reasons - fear of authority, desire to return to country of origin, fear of recriminations for assisting the police etc.

established excellent working partnerships with relevant NGOs, some of whom have obtained funding from Police and Crime Commissioners. It was reported that some NGOs have on occasion not disclosed notes of conversations with the complainants, contact logs, third party intervention, evidence gathering, which risked undermining operations and, on occasion, required a costly and time consuming court order to obtain.

Another concern raised by officers was the refusal to participate in the criminal justice system by certain groups of victims who were being referred by an NGO. Other officers voiced concerns about complainants repeating the same story as other indirectly associated victims of the same nationality.

Recommendation 22: Government should consider steps to increase the quantity and quality of NRM referrals from NGOs. This may be achieved by requiring that NGOs who are in receipt of public monies and/ or acting as a referral or recipient body from the police or local authority should disclose material relevant to an investigation as so deemed by the SIO; comply with a chain of evidence continuity policy; and apply an open accounts policy.

Recommendation 23: The Modern Slavery Threat Group should increase use of the option to extend the 45-day period of rest and recovery for victims of slavery by training all SPOCs to understand under what circumstances it would be appropriate to apply for an extension; and making it possible for command SPOCs to apply for an extension on behalf of investigative SPOCs.

Recommendation 24: Government should formalise and clarify the duties of local authority agencies to support the victims of slavery and trafficking once they have left the National Referral Mechanism service.

Policy considerations

There have been criticisms of the extent of the s.45 defence. Some argue that it should cover every offence committed by a trafficked person, regardless of proximity to the trafficking offence (s.31 of the Trinidad and Tobago TIP Act provides an absolute defence for example). Others argue that there must be some restriction on the defence, and that aligning it with a duress defence fits more comfortably. The Act does not define the term 'direct consequence', however, nor is there any definition or guidance in the explanatory note. This may lead to difficulty in the future.

In respect of the s.45 defence, it is assumed that the evidential burden is on the defence – this however is not clear on the current drafting of the legislation. Some have suggested that the defence as presently drafted is not compliant with Art. 8 of the trafficking directive.

Recommendation 25: In respect of s45 of the Modern Slavery Act, which provides for a defence for slavery or trafficking victims who commit an offence, consideration should be given to clarifying and/ or enhancing the

term 'direct consequence', and to clarifying the process by which s45 is raised and applied.

A number of those spoken to during the review observed that the offences of slavery / servitude / forced compulsory labour and the division between them needed clarification. The Modern Slavery Act 2015 section 1 incorporates s.3 "exploitation", and the personal circumstances of the victim, but the distinction between the three categories of offence are blurred.

"The overlap between the s.1 and s.2 offences is clearly indicated in s.3, which appears to define "exploitation" only for the purposes of s.2 (human trafficking) but in doing so makes reference back to s.1 (slavery etc.). A concern has been raised that by restricting the definition of exploitation to the s.2 offences, the Act creates a loophole as far as s.1 is concerned. As observed above, however, this point is dealt with by s.1(4), which expressly provides that in determining whether a person is being held in slavery or servitude etc., regard may be had to circumstances that constitute exploitation under s.3(3) to (6). It is nonetheless fair comment that the end result is perhaps a little cumbersome.

Peter Carter QC and Riel Karmy-Jones QC have observed that "it seems a little anomalous that the Act does not make "exploitation" an offence in its own right", given that the gravamen of the offences under ss.1 and 2 really lies in the nature of the treatment of the victim and the exploitation to which they are subjected. The fact that there is no stand-alone offence of exploitation has been said to be serious flaw, especially in relation to trafficking cases where the transportation of the victim may be difficult to evidence, perhaps because it took place a long time ago or the victim has no clear memory of it – as may be the case with a child – even though the exploitation element can be proven. Indeed, the Act has come under particular attack from those specifically concerned with the welfare of children, who fought for the creation of a specific offence of child exploitation even if one was not created for adults. The difficulty with creating a child exploitation offence lies in confining the scope of the offence to activity that can properly be described as criminal, rather than as falling within the scope of other areas of law such as family law. There would also be a risk that different judges and juries could reach inconsistent conclusions as to what conditions are sufficiently serious to amount to criminal "exploitation", resulting in conflicting decisions that could bring the law into disrepute. Further, there is already a series of offences that deal with different factual scenarios that might amount to child exploitation, e.g. the offences of wilful neglect and cruelty under the Children and Young Persons Act 1933, the offences in the Offences Against the Person Act 1861 and begging offences.

The question of whether an offence of exploitation is necessary or feasible was considered by the Joint Select Committee on the Modern Slavery Bill and raised by others in Parliament during debates on the Bill. The complexity of the question was recognised, as were the difficulties in defining the proper extent of any such offence, the fact that it would cross different areas of law and the fact that legislation was already in place to deal with the main scenarios envisaged. In all the circumstances, it was decided that there was no need for such an offence. The reasons are understandable, but the point may require further consideration in the

future. Modern slavery and trafficking is a form of offending that is constantly evolving, and this aspect of it is particularly important where it relates to those who are especially vulnerable, for example by reason of their age or mental ability/incapacity."[21]

Recent cases concerning labour exploitation have demonstrated that gap in the definition and application of "exploitation[22] and there is judicial and practitioner consensus that this merits review.

This issue also has bearing on the way in which the civil orders introduced by the Modern Slavery Act could be used. At the time of writing, 16 STPOs and 3 STROs had been granted. Their reach is significant, permitting Judges in England and Wales to impose criminal orders that will be enforced in a different jurisdiction. As stated by HHJ Topolski QC when considering the imposition of the first 3 STOP"s imposed in the Crown Court:

> "These orders are and are intended to be onerous and potentially wide ranging, and are designed to work as described in paragraph 2.3.11 of the Home Office Guidance as "*an additional tool available to law enforcement agencies to control the behaviour of individuals who may cause harm through committing slavery and human trafficking offences."*[23]

Considering the law and the Home Office Guidance he added:

> *"There is no doubt that the powers conferred by s.14 of The Modern Slavery Act are draconian and they are clearly intended to be so.*
>
> *It would I suspect surprise many to be told that this court is now possessed of a power to exclude a foreign national from a part of his home town at the conclusion of a prison sentence served in this country.*
>
> *It is clear that the rationale behind the creation of these new orders is to enable law enforcement bodies and courts to take tougher action against those involved in trafficking people.*
>
> *It is in my judgment equally clear that the purpose of these orders is to prevent slavery and human trafficking offences being committed by people who have already committed such offences and indeed punished for them.*
>
> *The despicable trade in human beings is a source of very considerable national and international attention and anxiety. Legislators across Europe have created a set of international obligations, and no doubt as part of that developing concern, the UK Parliament has enacted the 2015 Act and*

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[21] Rook and Ward on Sexual Offences 2016 5th Edition.
[22] R –v- R, P and D [2015] EWCA Crim 2079
[23] Judgment of HHJ Topolski QC in R –v-Suchy and others Central Criminal Court January 2016

introduced the provision under which this court is invited to make the orders in relation to these defendants."

The sharing of this judgement and the rationale applied to the passing of the orders did much to pave the way in the subsequent applications and later orders. There is still too little awareness of the far reaching impact of these orders and the particular benefits and protections they offer victims who wish to return to the area from where they were trafficked.

There is room however to extend their applicability further still. Schedule 1 could be extended to incorporate any other exploitative offences, such as prostitution, child grooming and other sexual offences, and Immigration Act 1971 section 25 assisting unlawful immigration.

Recommendation 26: Consider the definition of 'exploitation' in the Act, whether there would be merit for amending the Act to introduce a standalone offence of exploitation and whether Schedule 1 offences should include other associated exploitative offences.

Trafficking and exploitation cases are unusual in that the primary criminality i.e. the trafficking or exploitation, is often on an indictment which contains multiple other associated offending.

Cases concerning historic allegations are particularly difficult to indict as often the criminality alleged was not legislated for at the time when the exploitative and controlling behaviour was occurring. As a result, the offence of false imprisonment is often charged in the alternative, reflecting the incarceration element of the exploitation.

During the course of the review it has become clear that there is a growing perception that the current common law definition of false imprisonment is no longer reflecting the means by which detention of another can occur. A Law Commission report 'Simplification of Criminal Law: Kidnapping and Related Offences"[24] considered the law on false imprisonment - the case law is arguably unclear and merits review.

Recommendation 27: A Law Commission report should be undertaken on false imprisonment or an alternative offence of unlawful detention.

The benefit of STPOs and STROs as a preventative and deterrent measure is profound but they cannot and do not apply to all factual matrices, for instance in circumstances where servitude takes place within the family against a background of an arranged marriage. Beyond a restraining order preventing the defendant contacting his wife and her family, there is no order in place under these circumstances that would preclude him from applying for a spousal visa to repeat the offending. Similarly, an employee convicted of servitude would not be

[24] Published on 10th November 2014.

prevented from applying for a domestic workers visa and so would be free to continue offending at the conclusion of any custodial sentence.

Recommendation 28: Consideration should be given to creating a Visa order preventing the offender for applying and or sponsoring another person's entry into the UK and/ or making it mandatory that the defendant disclose the relevant conviction on any sponsoring/ supporting visa application.

Many of those consulted during the review commented on the challenge of gaining the trust of a victim who has become de-sensitised to their situation over years or even decades. Some victims willingly return to their captors. Police officers reported feeling powerless to intervene in such cases because there was no direct threat to life, even though the victim's welfare was clearly in jeopardy.

Recommendation 29: Consideration should be given to enhancing police powers of detainment for own protection. This would be limited to offences under the Modern Slavery Act, for a limited period, and could only be sanctioned by an officer ranked Detective Chief Superintendent or above.

Annex: Terms of Reference and Methodology

Purpose

The purpose of this review is ensure that the Modern Slavery Act, even in its infancy, is fulfilling the intentions of the legislature.

The following areas were considered:

- Is there sufficient awareness of the criminal justice measures contained within the Act?
- How well are the measures in the Act being implemented?
- Are there gaps in the provisions of the Act?
- What recommendations are there to fill any gaps found?

Scope

The review will cover most of the provisions in Part 1 (Offences), Part 2 (Prevention Orders) and Part 5 (Protection of Victims) of the Modern Slavery Act. The existing provisions which are in scope are those which:

(i) Consolidated existing offences into the Act;

(ii) Ensured that perpetrators can receive severe punishments, up to a life sentence;

(iii) Introduced civil orders to enhance the ability of Courts to place restrictions on individuals in order to protect people from the harm caused by modern slavery offences;

(iv) Introduced a defence for victims of slavery and trafficking who commit an offence;

(v) Introduced special measures for witnesses in criminal proceedings;

(vi) Specified legal aid for victims of slavery;

(vii) Introduced Presumption about Age;

(viii) Established a Duty on certain bodies to Notify the Secretary of State about suspected victims of slavery or human trafficking; and

(ix) Introduced a new reparation order to encourage the courts to compensate victims where assets are confiscated from perpetrators.

The review involved:

(i) A review of the current data held in the NRM and how it was recorded
(ii) A review of documentary material provided by various Police Forces in England and Wales in response to questions asked of them in writing
(iii) A review of material obtained from the office of Chief Constable Shaun Sawyer National Police Lead on Slavery and Trafficking
(iv) Consultation with police forces across England and Wales both at Strategic and Tactical Levels
(v) Consultation with other investigative agencies including UK Border Force
(vi) Consultation with external stake holders including defence solicitors and the Salvation Army
(vii) Consultation with the Crown Prosecution Service
(viii) Consultation with members of the Criminal Bar who have conducted cases in Slavery and Human Trafficking
(ix) Consultation with HM Circuit Court and High Court Judiciary
(x) Consultation with the Solicitor General
(xi) Consultation with Trafficking Commissioner Kevin Hyland OBE.
(xii) Consultation with the Ministry of Justice
(xiii) Consultation with HM Court Service
(xiv) Consultation with GLA
(xv) Consultation with the NCA and UKHTC
(xvi) Consultation with the Northern Ireland Attorney General's Office
(xvii) Consultation with the Northern Ireland Public Prosecutors Office
(xviii) Consultation with the PSNI
(xix) Consultation with Police Scotland