

BACKGROUND PAPER

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**OSCE/ODIHR 2006/2007 REVIEW  
ON THE PROTECTION OF TRAFFICKED  
PERSONS  
IN  
ENGLAND AND WALES**

**(NATIONAL REFERRAL MECHANISM ASSESSMENT)**

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## Executive Summary

This report presents the findings from an assessment on practices in England and Wales on the protection of trafficked persons conducted in 2005 and 2006. A draft version of the report was shared with the UK Government in April 2007. The Government responded with written comments in May 2007 which have been integrated in the report where possible. The OSCE/ODIHR agreed to conduct an update of the report in 2007 -2008, but this has not been possible due to financial constraints. The report therefore reflects developments on anti-trafficking in the UK up to July 2007. It is recognised that there have been many changes in anti-trafficking action since that time. Of particular relevance to the findings in this report have been developments to create a more formalised mechanism to identify and refer trafficked persons, establish a wider network of service providers, including for victims of labour trafficking and provide reflection delays and temporary residence permits to victims. These important developments have not been fully reflected in this report.

The assessment has been conducted in furtherance of the OSCE/ODIHR's anti-trafficking programme to promote establishment of 'National Referral Mechanisms' (NRMs) as a means of better protecting the rights of trafficked persons. It is also an activity within the OSCE/ODIHR's mandate to monitor and assist participating States in the implementation of their OSCE human dimension commitments. The OSCE participating States have undertaken to abide by a large number of commitments on trafficking. These agreements are politically binding in nature and the United Kingdom is considered to take them seriously. In particular, Ministers committed in 2002 to: "... *strive to render assistance and protection to the victims of trafficking, especially women and children, and to this end, when appropriate, to establish effective and inclusive national referral mechanisms ....*"<sup>1</sup>

The preparation and conduct of this assessment aimed to raise awareness of OSCE commitments, including recommendations to establish NRM's and allow for the gathering of information on country practices and expertise from the UK which might be shared with other OSCE participating States and anti-trafficking actors in future. It was recognised at the outset of the data collection that the UK had not claimed to have established a functioning NRM but, as a participating State of the OSCE, had committed to do so.

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<sup>1</sup> OSCE Ministerial Council, *Declaration on Trafficking in Human Beings*, MC(10).JOUR/2 , December 2002.

The report is divided into four chapters. Chapter one includes the introduction and methodology for the research. Chapter two, the longest chapter, focuses on the Legal and Policy responses to protect trafficked persons. It includes a summary of international instruments by which the UK is bound, including most recently the Council of Europe Convention on Action against Trafficking and a review of domestic law and policy, to support implementation of an NRM. It finds that the criminalisation of trafficking for sexual exploitation under the Sexual Offences Act 2003 differs from the Palermo Protocol definition of trafficking. Most significantly the UK offence does not require coercion or deception of a victim. This is in contrast to the practitioners' guidance and policy documents on trafficking, which generally do refer to coercion and deception as an integral element of trafficking. The report finds that this should be closely monitored to avoid the following: undermining the seriousness of the offence of trafficking, which may lead to difficulties with ensuring its enforcement; to ensure that law enforcement and prosecutorial services, with limited resources, are clear about who and what is being targeted by trafficking legislation and to ensure that data generated on trafficking convictions and victims is comparable with other countries data.

The offence of trafficking for sexual exploitation also does not require commission of an immigration offence. But certain policy documents still refer to tackling trafficking as a part of organised immigration crime. This creates a rather mixed impression of the UK's approach to trafficking and is not representative of the reality, better indicated by the case-law and nationalities of victims.

The report found that there were no prosecutions under the labour trafficking law, contained in the Asylum and Immigration (Treatment of Claimants) Act and concerns that victims of labour trafficking do not come forward to provide evidence. This was possibly due to a lack of awareness on the part of police and prosecutorial authorities of the law on trafficking, alongside the absence of services to assist victims of labour trafficking. Policy documents acknowledged these gaps and pledged to make progress on this front.

With respect to protection of victims in criminal proceedings, the UK has numerous good protective measures at its disposal but, so far, rarely applied in trafficking cases. On the weaker side is the absence of resident permits for victims following participation in criminal proceedings, as in other EU countries. Also for future consideration should be access to work permits for victims during proceedings, also in keeping with best practice in the EU.

Compensation for trafficking victims had not been awarded through criminal proceedings, although there had been one case of a victim awarded through the UK's compensation fund. There is a need to raise awareness of the judiciary and encourage courts to be proactive in awarding compensation. For victims of labour trafficking, compensation awarded through employment processes might be preferred and potentially quicker, although there were many practical barriers preventing access which should be focused on in future. Also to secure compensation to all trafficking victims there is a need for a properly funded legal support services for victims and guarantees to hold removal proceedings in abeyance during legal proceedings.

The report found numerous cases of victims of trafficking for both sexual exploitation and forced labour applying for asylum or humanitarian protection in the UK. Those cases supported by the Poppy project seemed to fair better than others, the credibility of victims more willingly accepted. This was not seen to be fair since non-referral to the Poppy project could be for a number of reasons, unconnected with the person's status as a victim. Credibility was an important issue in asylum claims, predicated on early disclosure of the victims experiences, which was incompatible with the need for a reflection period for victims. There were limited instructions on trafficking for asylum case workers, with no reference in policy instructions to victims of labour trafficking making the asylum process not always sensitive to trafficking issues. Also it was considered that country reports, used to help decision making in asylum applications need to reflect the seriousness of re-trafficking for returned victims and the consequences of relocating a victim on successful rehabilitation. With respect to detaining trafficking victims, policy guidance should clearly state that detention is never suitable. Also although fast-tracking was not considered suitable for victims of trafficking, reflected in policy guidance, the report found victims of trafficking were sometimes fast-tracked and that procedures needed to be adopted to ensure that officers could screen out trafficking cases and remove those from the process if cases slipped through.

The prosecution of victims of trafficking for offences arising in connection with their trafficking was still problematic in the UK, despite the issuance of guidance to prosecutors to discontinue such cases. It was recommended to ensure distribution and training on the guidance more widely alongside ensuring that investigating officers are skilled in identifying victims. It was not clear why service providers, experienced in working with trafficked persons, had been given little role in assisting in the identification of victims in such cases and recommended that more trusting relationships be established between key civil society organisations and prosecutors.

Chapter three covers the institutional response to trafficking. There is an Inter Departmental Ministerial Group on trafficking and a Ministerial NGO Advisory Group. The UK also adopted an Action plan on trafficking in March 2007 which will be regularly updated. The United Kingdom Human Trafficking Centre was created in October 2006 to provide a centre of expertise for law enforcement on trafficking. It also hosts a number of working groups, including participants from civil society, that may contribute to the development of UK policy on trafficking. Immigration policy in the UK includes references to trafficking and the rights of victims to be protected and assisted which represents progress. There might however still be preoccupations with the credibility of persons claiming to be trafficked; there are references in the policy to those who might 'abuse the system'. It will be important that the UK will not discriminate in the provision of a reflection delay and unconditional assistance between trafficked persons subject to immigration control and those who are not. Clear and consistent identification criteria and training for all officials involved with identification shall be needed in all cases.

Chapter four provides an overview of the operational responses to protect trafficked persons in the UK. It includes a discussion of the Memorandum of Understanding between Eaves Housing (Poppy), ACPO, Crown Prosecution Service and UKHTC which is seen as good practice. It finds that law enforcement operations have stepped up (such as Pentameter) to assist in the identification of victims, which have not resulted in deportations or prosecutions of identified victims. Some concerns have been expressed by service providers with regards the time and environment used to make decisions on a victim's status during such operations. There is also much good guidance material for practitioners on the nature of trafficking, identifying victims and treatment of them, including for immigration enforcement officers. It is though recommended that once the Council of Europe Convention comes into force, guidance material will clearly indicate that all victims of trafficking are entitled to protection and assistance, and not just a limited category of persons as currently. With respect to who gets identified as trafficked, there were conflicting views from law enforcement as to whether there needs to be evidence of coercion or not. This will hopefully be addressed by UKHTC's guidance. Also at the time of writing there was no identification of victims of labour trafficking.



## Introduction

The OSCE/ODIHR, the human rights institution of the OSCE, has been active in anti-trafficking action in the OSCE region since 1999. It focuses on the protection of international human rights in responses to trafficking. In particular it has developed the concept of ‘National Referral Mechanisms’ (NRMs), a human- rights based approach to identifying and protecting trafficking victims, which places protection of their rights at its centre. The ODIHR has sought to promote awareness of the role of NRMs as part of its mandate to support OSCE participating States in the fulfilment of their human dimension commitments.

In 2005 the ODIHR initiated a number of national reviews in the OSCE region with the collaboration of the relevant authorities. The reviews aim to assess how OSCE participating States are complying with their human dimension commitments, utilising the recommendations under the OSCE Action Plan to Combat Trafficking in Human Beings and protecting the rights of trafficked persons in practice.<sup>2</sup> The preparation and conduct of the assessments have also aimed to raise awareness of OSCE commitments on trafficking, in particular recommendations to establish NRM’s and allow for the gathering of information on country practices and expertise to be shared with other OSCE participating States and anti-trafficking actors in future.

Acknowledging the influential role of the UK in anti-trafficking action and the legitimate interest in its responses to trafficking amongst other states in the OSCE region, the UK was selected for review. It was acknowledged from the outset that the UK had not claimed to have established a functioning NRM. The UK Action Plan, adopted in March 2007, however now states that ‘*We acknowledge that the current system requires improvement and formal standardised identification procedures and a national referral mechanism will be developed as part of the implementation of the Council of Europe Convention.*’<sup>3</sup>

A highly mediatised police raid of a massage salon in Birmingham in October 2005 to rescue trafficked women provided the initial catalyst for the OSCE’s data collection. Reports following the law enforcement operation indicated that presumed trafficking victims were being held in immigration detention, rather than receiving assistance and support, and within

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<sup>2</sup> Assessments have been undertaken in Belarus, France, Kazakhstan, Russia and Turkey. The assessments in Kazakhstan, Turkey and Russia are completed.

<sup>3</sup> UK Action Plan on Tackling Human Trafficking, March 2007, p 50 referenced in written comments from UK authorities, May 2007.

hours of their apparent rescue were being prepared for removal from the UK.<sup>4</sup> The action suggested that international legal entitlements to protection, including access to justice and *non-refoulement*, were being denied to presumed trafficked persons in the interests of immigration control.

The OSCE Action Plan to Combat Trafficking in Human Beings, endorsed at the Maastricht Ministerial Council meeting, recommends that OSCE participating States take a number of steps to establish NRMs. These include adopting an appropriate legal framework that prohibits trafficking and protects its victims; building partnerships between civil society and law enforcement; creating guidelines to properly identify trafficked persons and establishing cross-sector and multi-disciplinary teams to develop and monitor policies.<sup>5</sup> This review aims to assess how the UK has implemented its OSCE commitments on anti-trafficking, with particular consideration given to the measures it has taken to establish an NRM.

It is important to note that the scope of this review is limited. It focuses on the protection and the rights of adult victims of trafficking and does not take the specific situation of children into consideration, to whom additional entitlements and rights are due, although this group is often an important beneficiary of the work of an NRM.

## **Methodology**

This report focuses on the legal, policy, institutional and operational responses to protect trafficked persons in the UK. Initial data for the assessment was collected between November 2005 to July 2006 through a desk review of literature, press and media coverage on trafficking in the UK, public policy documents, practitioners guidance, training materials, legislation and approximately 30 interviews with anti-trafficking stakeholders in England and Wales from government agencies, civil society organisations, trade unions, lawyers and academics. Interviews were mainly conducted between November 2005 and January 2006. They lasted 60-90 minutes and were based on semi-structured guidelines prepared prior to the assessment. Information provided by individual interviewees has not been attributed in the report although information indicating the kind of interviewee has been given where possible. Further data was then collected through a desk review and email exchange to December 2006.

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<sup>4</sup> See <http://www.telegraph.co.uk/news/1499658/Three-due-in-court-after-massage-parlour-raid.html>

<sup>5</sup> OSCE Ministerial Council Decision No.2/03, *Trafficking in Human Beings*, MC.DEC/2/03, December 2003. For further guidance on key elements of an NRM see also OSCE/ODIHR Handbook '*National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*', 2004.

The draft report was shared with the UK authorities in April 2007 and a meeting hosted by the Home Office in London to discuss its findings. Detailed written comments were provided to the OSCE/ODIHR by the Home Office, the Border and Immigration Agency, the Crown Prosecution Service, the Attorney General's Office, the UK Human Trafficking Centre and the Gangmasters Licensing Authority in May 2007. These comments have been incorporated and referenced in the report where appropriate. A further update to the report was originally intended to cover the period of 2007/2008, but unfortunately due to financial constraints has not been possible. References to certain key changes up to July 2007 have however now been included in the report. It should be noted that the interviewees for the report represent a statistically small sample of those working on trafficking in the UK. Also that the interview data for this report was mainly collected by January 2006. Therefore the views expressed by interviewees are not necessarily representative of all anti-trafficking action in the UK and certain views may have changed up to July 2007.

## 2. Legal and Policy Responses to Protect Trafficked Persons

An NRM is dependent for its good functioning on a legal framework which both prohibits trafficking and provides for the protection and assistance of victims. The first part of this section provides an overview of the international legal instruments to which the UK is a party and the OSCE commitments by which the UK is politically bound. Many of these instruments require the UK to prohibit trafficking in human beings, slavery and forced labour. Other instruments create rights or protections to which trafficked persons are entitled and which an NRM is designed to secure in practice. The second part of this section reviews the domestic law on trafficking and considers the extent to which the current legal framework supports operation of an NRM.

### 2.1 International Treaties and commitments

#### 2.1.1 International instruments

The UK is party to a number of international instruments requiring the prohibition of slavery and forced labour including the UN slavery conventions,<sup>6</sup> the ILO Conventions 29 and 105 prohibiting forced labour,<sup>7</sup> and ILO Convention 182 outlawing the worst forms of child labour.<sup>8</sup>

It is also party to the UN Transnational Organised Crime Convention and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (*Palermo Protocol*).<sup>9</sup> These instruments include mandatory obligations to criminalise, investigate and prosecute trafficking but the standards with respect to the protection and assistance to victims are less strong.

In terms of rights protection, the UK is party to five of the six main international human rights instruments which are indirectly relevant to the protection of trafficked victims as well as the

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<sup>6</sup> *Slavery Convention*, Signed at Geneva on 25 September 1926, Entry into force: March 1927, UN, ST/HR/*Protocol amending the Slavery Convention*, Signed at Geneva on 25 September 1926, Approved by General Assembly resolution 794 (VIII) of 23 October 1953, Entry into force: December 1953.

*Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956, Entry into force: April 1957.

<sup>7</sup> *Convention concerning Forced or Compulsory Labour (C029)*, Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its fourteenth session, Entry into force May 1932.

*Convention concerning the Abolition of Forced Labour (C105)*, Adopted on 25 June 1957 by the General Conference of the International Labour Organisation, 40<sup>th</sup> session, Entry into force: January 1959.

<sup>8</sup> *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182)*, Adopted on 17 June 1999 by the General Conference of the International Labour Organization, 87<sup>th</sup> session, Entry into force: November, 2000.

<sup>9</sup> *United Nations Convention against Transnational Organized Crime*, Adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations, Entry into Force: September 2003; *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations, Entry into force: December 2003.

European Convention on Human Rights, incorporated in UK law by the 1998 Human Rights Act.<sup>10</sup> It is also party to ILO Convention 97 on Migrant Workers<sup>11</sup> but not to ILO Convention 143<sup>12</sup> or the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which include provisions to protect both regular and irregular migrant workers, and clearly relevant to trafficked victims too.<sup>13</sup> It is also party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol which obliges it to provide protection to persons fleeing their country because of persecution, which may include trafficked persons.<sup>14</sup> The Convention also imposes an obligation on States not to expel or return ('refouler') a refugee to a situation of serious risk which may be relevant in asylum proceedings of trafficked persons.<sup>15</sup>

The UK government signed the Council of Europe Convention on Action Against Trafficking on 23<sup>rd</sup> March 2007.<sup>16</sup> This Convention contains numerous provisions on the protection of trafficked victims and is the first instrument to acknowledge that correct identification is essential to the provision of protection and assistance and that a failure to identify will lead to the denial of rights. It also recognises that there is a need to provide basic assistance, even where victims have only been provisionally identified, and regardless of whether or not they are able to act as witnesses. Importantly it strengthens provisions relating to reflection periods and temporary residency permits for presumed trafficked persons. The UK in the past has expressed concerns that residency entitlements in the Convention would add to the attractiveness of the UK as a destination country for migrants and fraudulent claimants.<sup>17</sup> However the position of the UK is that it now accepts that by signature of the Convention

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<sup>10</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, 213 U.N.T.S. 222, Entry into force September, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force in September 1970, December 1971, January 1990, and November 1998 respectively. Incorporated in UK law by the Human Rights Act 1998, ISBN 0 10 544298 4, Entry into force October 2000. The most relevant articles in relation to trafficking include article 2, right to life, article 3, prevention of torture, inhuman or degrading punishment, article 4, prohibition of slavery, article 5, right to liberty, article 6, right to a fair trial including in certain circumstances the right to legal assistance, article 8, right to respect for private and family life and article 14, prohibition of discrimination.

<sup>11</sup> *Convention concerning Migration for Employment (Revised 1949) (C 97)*, Adopted on 01 July 1949 by the General Conference of the International Labour Organisation, session 32, Entry into force: January 1952.

<sup>12</sup> *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (C143)*, Adoption on 24 June 1975 by the General Conference of the International Labour Organisation, 60th session, Entry into force: December 1978.

<sup>13</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Adopted by General Assembly resolution 45/158 of 18 December 1990. Note the Coalition for Migrant Workers' Rights, supported by representatives from the Catholic Bishops' Conference, the Joint Council for the Welfare of Immigrants, Kalayaan, Oxfam, the T&GWU, the TUC and UNISON support ratification of the Convention in the UK.

<sup>14</sup> *Convention relating to the Status of Refugees*, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entry into force April 1954. *The Protocol relating to the Status of Refugees*, Approved by the Economic and Social Council resolution 1186 (XLI) of 18 November 1966, taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966, Entry into force in October 1967.

<sup>15</sup> Article 33 Convention relating to the Status of Refugees (1951).

<sup>16</sup> *The Council of Europe Convention on Action against Trafficking in Human Beings* (CETS N 197), Adopted by the Committee of Ministers on 3 May 2005. For further details and update see [www.coe.int/trafficking](http://www.coe.int/trafficking).

<sup>17</sup> 'Tackling Human Trafficking – Summary of responses to the Consultation on Proposals for a UK action plan', Home Office, June 2006.

such risks can be managed in the context of an increased drive against irregular migrants and organised immigration crime.<sup>18</sup>

At the EU level, the UK is bound by the EU Council Framework Decision on Combating Trafficking in Human Beings which expands the Palermo Protocol's criminal justice focus on trafficking but provides very little in terms of victims rights and protection.<sup>19</sup> It has opted out of the EU Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with authorities.<sup>20</sup> This Directive obliges member states to issue residence permits of at least 6 months as incentives for victims of trafficking and others to come forward and cooperate with the authorities in the detection and prosecution of smugglers and traffickers.<sup>21</sup> The UK government has commented that the Directive provides for less extensive protection than the Council of Europe Convention which the UK is now implementing.<sup>22</sup>

Additionally the UK is bound by the EU Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.<sup>23</sup> It outlines numerous detailed guarantees which should be provided to all victims of crime in EU member states including the right to support and information about proceedings (including on compensation),<sup>24</sup> the right to legal assistance and aid,<sup>25</sup> the right to protection and trauma minimization during proceedings,<sup>26</sup> the right to victims resident in other EU states to be accorded the same rights<sup>27</sup> and importantly the right to compensation. The EU Council Directive on compensation of crime victims of 2004 sets up a system of cooperation to facilitate access to compensation for victims of violent intentional crime committed on their territory.<sup>28</sup> It compels states to establish a state funded scheme for payment in these cases<sup>29</sup> and to ensure they establish cooperation structures for individuals from other EU member states to ensure they can easily access the schemes from their home country.

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<sup>18</sup> Written Comments of UK authorities to the draft report, May 2007.

<sup>19</sup> *Council Framework Decision 2002/629/JHA on combating trafficking in human beings* OJ L 203 of 01.08.2002, Entry into force August 2002.

<sup>20</sup> *Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*, OJ L 261 of 06.08.2004, Entry into force August 2004.

<sup>21</sup> *Ibid.*

<sup>22</sup> Written comments of UK authorities to the draft report, May 2007.

<sup>23</sup> Available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_082/l\\_08220010322en00010004.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_082/l_08220010322en00010004.pdf).

<sup>24</sup> Art.4, 13 & 14.

<sup>25</sup> Art.6.

<sup>26</sup> Arts.2, 5, 8 & 15.

<sup>27</sup> Art.11.

<sup>28</sup> Available at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l\\_261/l\\_26120040806en00150018.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_261/l_26120040806en00150018.pdf), Art 1.

<sup>29</sup> Art.2 & 12(2).

### 2.1.2 OSCE commitments

The UK is a participating State of the OSCE and is therefore bound to implement the political commitments adopted by the Organisation. The Organisation has adopted numerous commitments with respect to trafficking most notably in the adoption of the OSCE Action Plan to Combat Trafficking in Human Beings in July 2003.<sup>30</sup>

The Action Plan was intended as a comprehensive toolkit to assist OSCE States, through a series of recommendations, in the implementation of their political commitments on trafficking. In its design it drew on existing experience gained through the implementation of concrete activities to combat trafficking, such as those undertaken by the OSCE field and institutions, the Stability Pact Task Force on Trafficking in South Eastern Europe and leading international organisations and NGOs.<sup>31</sup> The Action Plan attempts to address trafficking comprehensively containing numerous recommendations for ‘multi-dimensional’ action to protect trafficked victims, prevent trafficking and criminalise and prosecute the perpetrators. Unlike many of the international law instruments discussed in this section, the Action Plan is effective in addressing all aspects of trafficking equally with recommendations relevant to issues of human rights protection, social and economic development, criminal justice and the rule of law. The Action Plan has been supplemented with an addendum in 2005 ‘Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance’ and a further Ministerial Council Decision on Trafficking in 2006 with particular reference to labour exploitation.<sup>32</sup>

The Action Plan includes numerous recommendations relevant to the establishment of an NRM as well as referring to the ODIHR’s Handbook on NRMs as a useful source of advice and information regarding the role of NRMs.<sup>33</sup> An NRM should ideally secure compliance with the Action Plan’s recommendations relevant to protection and assistance. These recommendations include that:

- victims of trafficking are not subject to criminal proceedings as a result of having been trafficked (chapter III, s.1.8),

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<sup>30</sup> OSCE Permanent Council Decision No. 557, *OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, July 2003. Text available at: [http://www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf)

<sup>31</sup> In particular the United Nations Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Addendum E/2002/68/ ADD.1, 20 May 2002, were particularly influential in the development of the Action Plan.

<sup>32</sup> OSCE Permanent Council Decision No. 685, *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the special needs of child victims of trafficking for protection and assistance*, PC.DEC/685, July 2005.

OSCE Ministerial Council Decision No. 14/06, *Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach*, MC.DEC/14/06 December 2006.

<sup>33</sup> OSCE Action Plan to Combat trafficking in Human Beings, Chapter V, s.3.1

- States take measures to provide effective protection from retaliation or intimidation for witnesses in criminal proceedings and for their relatives and other persons close to them (chapter III, s.4.1);
- States ensure data protection and the victim's right to privacy (chapter III, s.4.3);
- States provide legal counselling for victims when they are in the process of deciding whether or not to testify in court (chapter III, s.4.5);
- States permit NGO's to support victims in court hearings (chapter III, s.4.6);
- States establish telephone 'hotlines' to act as an independent source of advice and guidance and a first point of contact for referral as well as to facilitate the anonymous reporting of cases (chapter IV, s.4.11);
- States adopt legislation which provides a legal basis for rendering assistance and protection (chapter V, s.1.1);
- States provide guidance to facilitate the accurate identification and treatment of trafficking victims (Chapter V, s.3.2);
- States establish shelters to meet the needs of trafficked persons and that access to shelters is for all victims of trafficking regardless of their readiness to co-operate with authorities in investigations (Chapter V, s.4);
- States develop social assistance and integration programmes including legal counselling, medical and psychological assistance and access to healthcare (Chapter V, s.6);
- States assist victims in voluntary repatriation with due regard for their safety and that of their families (Chapter V, s.7.1),
- States provide a reflection period and temporary or permanent residence permits (Chapter V, s.8);
- States ensure that the confiscated proceeds of trafficking are used for the benefit of victims of trafficking and consider establishing a compensation fund for trafficked victims (Chapter III, s.1.5).

The NRM Handbook was developed on the basis of the experience of governmental actors, law enforcement, non-governmental organisations and OSCE field operations in developing referral mechanisms, particularly in the context of addressing trafficking for sexual exploitation. It outlines suggested roles for governmental actors and civil society, highlights key issues in the operation of an NRM and describes the type of programmes and services that should ideally be available to trafficked persons. It provides examples of what has worked effectively in practice, based on the experience of the authors and a broad range of experts consulted on anti-trafficking structures and responses. The experiences of Germany,



Serbia and Montenegro and Czech Republic were particularly relevant in developing the Handbook but examples from other countries were also used. It provides guidance on how many of the recommendations in the Action Plan for victim protection and assistance can be met in practice with detailed information on key aspects including identification, referral, support, assistance and protection, compensation, privacy and return and reintegration. The handbook does not have a special focus on the situation of trafficked children to whom additional entitlements and protection are due. The methods and concepts outlined in the handbook therefore should be supplemented by reference to the international legal framework to protect the rights of child victims of trafficking.

## **2.2 Domestic Law and Policy**

The ideal legal framework for operation of an NRM would mean:

- The existence of a distinct criminal offence of trafficking in human beings in line with the Palermo Protocol and with appropriate penalties and protection within criminal proceedings;
- Legal possibilities for the confiscation of assets and access to compensation for victims;
- Legal provisions for granting a reflection delay to presumed trafficked persons which may be followed by the provision of a temporary residence permit and work permit;
- Provision of state protection and assistance to victims of trafficking including non-citizens (eg. the financial sustainability of a temporary stay should be assured, access to medical care, shelter and the protection of physical security).<sup>34</sup>

This section reviews the UK legislation and policy with a view to assessing how it sustains the functioning of an NRM.

### **2.2.1 *The need for a 'distinct' offence of trafficking***

The definition of the offence of trafficking contained in the Palermo Protocol and the EU Framework Decision separates the offence into three elements:

- i) The act of trafficking: recruitment *or* transportation *or* transfer *or* harbouring *or* receipt of persons. AND
- ii) The means used to involve the individual in the act: threat or use of force *or* forms of coercion *or* abduction *or* fraud *or* deception *or* abuse of power or abuse of a position

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<sup>34</sup> NRM Handbook pp 39 - 42.

of vulnerability *or* the giving and receiving of payments or benefits to achieve the consent of a person who has control over another person. AND

- iii) The *exploitative purpose* of the trafficking, *at minimum*: the exploitation of the prostitution of others *or* other similar forms of sexual exploitation *or* forced labour *or* services *or* slavery *or* practices *or* servitude *or* the removal of organs.<sup>35</sup>

Additionally this Article states that where any of the means of coercion have been used the question of whether the victim consented to the exploitation is irrelevant. The Protocol goes on to state that the conduct described in this definition be criminalized along with attempts to commit the offence, being an accomplice or organizing others to commit the offence.<sup>36</sup>

### ***2.2.1.1 Trafficking for sexual exploitation***

Trafficking for sexual exploitation is criminalised in the UK under ss 57- 60 of the 2003 Sexual Offences Act. The definition of trafficking in the Act does not replicate that used in the Palermo Protocol or the EU Framework decision, as in some countries nor does it contain the same elements within the acts, means or purposes. The government has commented that the Sexual Offences Act did not intend to define trafficking but rather indicates what constitutes an offence of trafficking for sexual exploitation.<sup>37</sup>

The Act expresses the offence of trafficking as:

- i) the arrangement or facilitation of: the arrival in the UK; travel within the UK; or departure from the UK of another person AND
- ii) either he
  - (a) intends to do anything to that person which '*if done will involve the commission of a relevant offence*' or
  - (b) he believes that another person is likely to do something to that person which '*if done will involve the commission of a relevant offence.*'

'Relevant offences' include rape (s.1); sexual assault (s.3); causing a person to engage in sexual activity without consent (s.4); paying for sexual services of a child (s.47); causing or inciting child prostitution or pornography (s.48); causing or inciting prostitution for gain (s.52); controlling prostitution for gain (s.53) amongst others.<sup>38</sup> (Sections 52 and 53 include 'voluntary' or 'consensual'. There is no separate offence of forced prostitution in the relevant

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<sup>35</sup> See Article 3 Palermo Protocol.

<sup>36</sup> See Article 5 Palermo Protocol

<sup>37</sup> Written comments from UK authorities, May 2007.

<sup>38</sup> Section.60(1)(a) Sexual Offences Act 2003.

part of the Act although the interpretation of ‘prostitute’ clearly extends to include persons who have been compelled to provide sexual services (s.51(2)).)

Regarding the requisite ‘acts’ it is questionable whether the “*arrangement or facilitation*” of the movement of a person can be interpreted to include all the acts elucidated in the Palermo Protocol. The legal guidance to the Crown Prosecution Service on human trafficking contains the following “key point” in relation to section 57: “*The offence is intended, however, to cover A (offender) if he is part of the enterprise of trafficking for sexual exploitation even if he is one link in a chain of people helping to traffic B (victim). Provided A has the necessary intent or belief, the offence will cover, for example, his recruiting of B in B’s country of origin, his making arrangements for transport and food for B’s journey, his forging of immigration documents for B, or any other involvement in bringing B to the UK.*”<sup>39</sup> Thus, whilst transfer and transport most likely fall within the definition it is arguable whether “harbouring” or “receipt” would be considered by judges to fall within these concepts. Since the UK is a destination country for trafficked victims one would expect that the act of ‘receipt’ of trafficked persons for the purposes of exploitation, which represents the end of the chain of trafficking whether it be internal or cross-border trafficking, is both common and arguably more easily investigated. Also the actor ‘receiving’ the trafficked person with intent to exploit is most likely the exploiter of the victim responsible for much of the harm to which trafficked victims are subject, which makes it particularly important that this act is covered by the law.

The government has commented that prosecutors are aware that there is a whole chain of persons involved in the trafficking of victims ie the recruiter in source country, the transporter in transit country and the receiver in the destination country, the ultimate exploiter and that the only limitation with respect to being able to prosecute individual perpetrators is the evidence available to prove that they are in the trafficking chain. It makes reference to the case of *R v Fernandez* involving charges of conspiracy to traffic into the UK and conspiracy to control prostitution for gain as indicating that the acts of harbouring or receipt would be considered to fall within the trafficking offence. This case involved charges against Fernandez for the offence of trafficking in relation to her involvement in the organised movement of persons into the UK. The act of receipt of persons for the purposes of exploitation, was charged, not as trafficking, but separately as the control of prostitution for gain.<sup>40</sup> The commentary by the Sentencing Advisory Panel in its advice to the Sentencing Guidelines Council on section 57, quoted in the judgement though is instructive in setting out

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<sup>39</sup> [http://cps.gov.uk/legal/section7/chapter\\_g.html](http://cps.gov.uk/legal/section7/chapter_g.html)

<sup>40</sup> [2007] EWCA Crim 762.

the steps of trafficking stating it to include the recruitment of people from one place to work in another; the arranging or facilitating the transport of the person from the place of origin to the destination and thirdly the managing of sex workers at the destination.<sup>41</sup>

Of particular note, the offence of trafficking in UK law does not require the perpetrators to use forcible, coercive or deceptive means to involve them in the act as intended by the Palermo Protocol definition. This also means that there is no discussion of the “consent” requirement in the UK law.<sup>42</sup> Some of the “relevant offences” intended or foreseen by the offender would require use of such means by virtue of their nature or their own definitions e.g. it is highly likely that forcible, coercive or deceptive means would be needed against a victim who the offender intends to rape or cause to be raped. However, for the offence of “prostitution for gain” such means are not necessary and neither are they inherent in the nature or definition of the offence. This means that the offence of trafficking can be committed by someone organising the travel into, within or out of the UK of another person for the purposes of gaining from that person’s prostitution, without necessarily forcing, deceiving or coercing him/her. The case of *R v Fernandez* reflects this position, concerning the case of women recruited to willingly work in prostitution and in which there was no suggestion of coercion, corruption or deception on the part of the ‘trafficker’. It is of course also recognised that the law encompasses situations where such means have been used. The government has commented that the distinction will be reflected in the sentencing. Large variations in sentencing are evident between *R v Plakici*, where the perpetrator was sentenced to 23 years where force had been used and *R v Fernandez*, where no force was used and the perpetrator was sentenced to four years for exploiting consenting prostitutes.<sup>43</sup>

Nevertheless the trafficking offence in UK law is substantially broader than the Palermo definition. The offence has therefore been described as a ‘catch-all’ offence, leading to situations where *‘some not involved in coercion are being severely punished, while those involved, seemingly avoiding prosecution.’*<sup>44</sup> This arguably goes against the intention of the drafters of Palermo in defining the term trafficking who aimed to achieve international parity in the definition of the crime: *“The main reason for defining the term “trafficking in persons” in international law was to provide some degree of consensus-based standardization of concepts. That, in turn, as intended to form the basis of domestic criminal offences that would*

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<sup>41</sup> Ibid at paragraph 184.

<sup>42</sup> The government has commented that experience has shown that it is in fact advantageous for the ‘means’ not to be expressed as part of the offence. Normally the only evidence relied on to prove elements of coercion and deception comes from the victim and yet some of the prosecutions have been brought before the victim is aware she is likely to face force, coercion or deception. From the written comments from UK authorities on draft report, May 2007.

<sup>43</sup> Written comments from UK authorities on draft report, May 2007.

<sup>44</sup> See ‘Tackling Human Trafficking – Summary of responses to the Consultation on Proposals for a UK Action Plan’, at 32.

be similar enough to support efficient international cooperation in investigating and prosecuting cases. Apart from direct advantages in that area, it was also hoped that the agreed definition would also standardize research and other activities, allowing for better comparison of national and regional data and giving a clearer global picture of the problem.”<sup>45</sup> Although, the drafters specifically stated that countries are at liberty to define and criminalise “*exploitation for prostitution*” as suitable in their national jurisdictions<sup>46</sup> this should not be construed in such a way as to dilute the meaning of the crime of trafficking. This statement is also based on the assumption that all the elements of the Palermo trafficking definition are present: “*The obligation is to criminalize trafficking as a combination of constituent elements and not the elements themselves.*”<sup>47</sup> There are a number of possible implications of this.

For the effective operation of an NRM, not only is a distinct offence of trafficking needed but there must also be a reasonable chance of its enforcement. Research indicates that historically there have been few prosecutions of those involved in the exploitation of prostitution of others in the UK.<sup>48</sup> In particular it has been noted that although brothels have been illegal in the UK since 1885 there has been neither the personnel nor the resources to patrol off-street prostitution and enforce this law.<sup>49</sup> It is recognised that the Government published a strategy to tackle prostitution in 2006 which provides a framework for action to challenge the existence of prostitution which may increase the police’s activity to tackle exploitation of prostitution.<sup>50</sup> However there is a risk that if the current offence of trafficking for sexual exploitation is seen in key aspects as comparable to exploitation of prostitution offences, the trafficking offence differing only in that the organisation of peoples’ movement into, within or out of the UK for this purpose is now required (which might not even breach immigration legislation) there might be equal difficulty (and disinclination) to ensure its enforcement.

There are also possible concerns with data. Besides the fact that the data generated on trafficking in the UK, due to the breadth of the legal definition, might not be comparable to data generated in other countries on trafficking, it is also not entirely clear when estimates of numbers of victims of trafficking for sexual exploitation are provided by officials what exactly they reflect. For instance following the recent ‘Pentameter’ operation, a nationwide

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<sup>45</sup> UNODC “Legislative Guide for the implementation of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime” Para 35.

<sup>46</sup> Para 64 Interpretive notes [http://www.unodc.org/pdf/crime/final\\_instruments/383a1e.pdf](http://www.unodc.org/pdf/crime/final_instruments/383a1e.pdf).

<sup>47</sup> Para 33 UNODC Legislative Guide

[http://www.unodc.org/pdf/crime/legislative\\_guides/03%20Legislative%20guide\\_Trafficking%20in%20Persons%20Protocol.pdf](http://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf)

<sup>48</sup> *Policing Prostitution: ACPO’s Policy, Strategy and Operational Guidelines for dealing with exploitation and abuse through prostitution*, Association for Chief Police Officers, October, 2004.

<sup>49</sup> Self H.J, *A Response to ACPO’s Policy, Strategy and Operational Guidelines for Dealing with Exploitation and Abuse Through Prostitution*, network of sex work projects, 2004.

<sup>50</sup> UK Action Plan at 31

law enforcement operation active from February to May 2006, it was claimed that there were possibly 7000 trafficked victims of sexual exploitation in the UK at any one time.<sup>51</sup> One wonders whether this figure includes all persons brought into the UK, or moved within it, who are in some way controlled in prostitution, regardless of whether they have been subject to coercion or deception.

The reason for confusion on the part of external researchers is that although the law makes no reference to force, coercion and deception in defining trafficking most of the policy and practitioners documents do. For example in its foreword to the UK action Plan on trafficking the Home Secretary and Scottish Executive Minister for Justice describe trafficking as ‘modern-day slavery, where victims are coerced, deceived or forced into the control of others who crudely and inhumanely seek to profit from their suffering.’<sup>52</sup> The practitioners’ guidance focuses on the international definition of trafficking under the Palermo Protocol making explicit reference to the coercion and deception employed by traffickers to force a person into prostitution. The Home Office’s Crime Reduction Toolkit describes trafficking as ‘the exploitation of women, children and men through *force, coercion, threats and the use of deception*’ and includes a page of guidance on the kinds of deception and coercion employed by traffickers to exploit their victims.<sup>53</sup> Training materials for law enforcement also reference the coercion, deception and force inherent in trafficking and reference a victim subject to deception and violence before being forced into prostitution.<sup>54</sup> Recent statements made by ministers of state and police officers during the ‘Pentameter’ operations also refer to trafficked victims ‘forcibly’ exploited in prostitution.<sup>55</sup> Finally the eligibility criteria for victims referred to the Poppy project include having been forcibly exploited.<sup>56</sup>

Therefore it is not clear from a combined reading of the law and policy documents who gets included as a victim of trafficking for sexual exploitation. This also is likely to be a concern for law enforcement, since knowing exactly who they should be targeting in anti-trafficking operations with limited resources for both ‘rescue’ and prosecution is clearly important.

Whilst acknowledging that the offence is easier to prosecute without having to prove ‘coercive means’, the absence of this notion in the UK law and the resultant extension of the meaning of trafficking is a matter which should be closely monitored and evaluated. In

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<sup>51</sup> Opening address of Dr Tim Brain, Gold commander, Operation Pentameter at Pentameter de-briefing conference, 21<sup>st</sup> June 2006. Conference notes on file with authors.

<sup>52</sup> UK Action Plan on Tackling Human Trafficking, March 2007, Foreword at p.2.

<sup>53</sup> *Trafficking in Persons Crime Reduction Toolkit*. See the section ‘The extent of coercion and deception’, full text available at [www.crimereduction.gov.uk/toolkits/tp](http://www.crimereduction.gov.uk/toolkits/tp)

<sup>54</sup> *Human Trafficking for Sexual Exploitation: Working with the victim. First Responders Module*, Centrex, 2006.

<sup>55</sup> Pentameter De-briefing conference, 21<sup>st</sup> June 2006, conference notes on file with authors.

<sup>56</sup> For details of Poppy project see [http://www.eaves4women.co.uk/POPPY\\_Project/Accommodation\\_and\\_Support.php](http://www.eaves4women.co.uk/POPPY_Project/Accommodation_and_Support.php).

particular the impact of the definition as a law enforcement measure, in both national and international contexts, needs to be closely followed. Considering the difference from the internationally defined offence, which focuses on more serious offences, the full force and meaning of the Palermo Protocol may not be being achieved nor are comparable statistics being produced.

### ***Sentencing Guidance and possible relevance of immigration offences***

According to the UNODC Legislative Guide the sanctions adopted within domestic law must take into account and should be proportionate to the gravity of the offences (art. 11, para. 1, of UNTO Convention). The Sexual Offences Act 2003 provides for penalties of up to 14 years imprisonment. The actual penalty for the offence is dependent on the facts in question with sentencing taking into account case law and sentencing guidelines. On 30 April 2007 the Sentencing Guidelines Council issued guidelines for judges and magistrates on sentencing under the Sexual Offences Act, including for the offence of trafficking. These guidelines are issued on the basis of case law, government policy, detailed advice from lawyers and academics and consultations with interest groups.<sup>57</sup> In the guidelines it is recommended that the starting point for the penalty is two years custody and a number of aggravating factors are identified which, where present, should increase the length of the prison sentence to the maximum. These include the use of force or abduction or inhumane treatment, threats of force, deception, financial extortion, other forms of coercion, confiscation of a victim's passport, the nature of the sexual exploitation and the victim's age. Other aggravating factors include participation in a large-scale commercial enterprise involving a high degree of planning, organisation or sophistication, financial or other gain and many victims.<sup>58</sup>

It is notable that only community penalties or fines are recommended for the exploitation of prostitution (s52&53 SOA 2003) '*where an offender's involvement was minimal and he or she was not actively engaged in the coercion or control of those engaged in prostitution.*'<sup>59</sup> In contrast, the Guidelines state that in relation to the offence of trafficking a community penalty or fine would "rarely be an appropriate disposal" despite the fact that trafficking with the intention of exploitation for prostitution can also be committed without coercion or deceit (and thus adds only the extra element of movement of people to the original offence).

One interpretation of this might indicate that in the UK context trafficking cases merit custodial sentences as a result of the 'arranging or facilitating travel' element of the offence

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<sup>57</sup> [http://www.sentencing-guidelines.gov.uk/docs/82083-COI-SCG\\_final.pdf](http://www.sentencing-guidelines.gov.uk/docs/82083-COI-SCG_final.pdf)

<sup>58</sup> Pages 130-131 of the Guidelines

<sup>59</sup> Page 126 Guidelines

rather than the exploitation of the victim ie the immigration-related element rather than the human rights element. On a review of the Sentencing Advisory Panel's advice to the Sentencing Guidelines Council it appeared that the possible immigration related offence connected with trafficking justified the custodial sentence. It notes that '*our proposals are based on the sentencing principles that have been established in relation to other immigration offences, for example facilitating illegal entry*'.<sup>60</sup> This rationale though is not repeated in the Guidelines although they do state that the offence of trafficking "*is serious offending behaviour, which society as a whole finds repugnant.*" It does not give reasons for this finding.<sup>61</sup>

Although the offence of trafficking however does not require an immigration offence, one case illustrates the role of the immigration related offence in sentencing. In *R v Roci and Ismailaj*,<sup>62</sup> the appeal judge reflected that Albanian women who had come to the UK illegally under the assumption that they would be working as prostitutes, had not been corrupted and the coercion that they had experienced (removal of passports, threats, inhuman treatment and restriction of liberty) had been minor in comparison to that suffered by the victims in the earlier case of *R v Plakici*.<sup>63</sup> Accordingly sentences of 3 years and 9 years were passed, as a '*deterrent for those intending to facilitate illegal entry into the UK for the purposes of exploitation of prostitution*'.<sup>64</sup>

In gathering information for this report the government was requested to provide data on whether cases have been brought against traffickers who had not committed immigration offences, to better understand how important the immigration offending aspect of trafficking is in the UK context. The government responded that most section 58 charges would not involve immigration offences and that there had been 50 offences charged in the last year, although no details on convictions for these charges were provided. It is also notable that in guidance to prosecutors the following is stated with respect to selecting a prosecuting advocate for trafficking cases: '*Experience to date has shown that those experienced in*

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<sup>60</sup> Para 193 of the Panel's Advice at <http://www.sentencing-guidelines.gov.uk/docs/advice-sexual-offences.pdf>

<sup>61</sup> Page 130 Sentencing Guidelines.

<sup>62</sup> *R -v-ROCI and ISMAILAJ* [2005] EWCA Crime 3404

<sup>63</sup> Attorney-General's Reference No 6 Of 2004 ( *R v Plakici* [2005] 1 Cr App R(S) 83). Plakici, of Albanian origin, was identified as having trafficked women from Eastern Europe over a period of time and having detained them in a brothel to provide sexual services against their will. As the offences pre-dated the trafficking offences introduced in the 2002 legislation Plakici was charged with a range of offences including facilitating illegal entry, kidnapping, procuring a girl to have unlawful sex, living on prostitution, incitement to rape and false imprisonment. He was found guilty and originally sentenced to 10 years imprisonment. On appeal, the Attorney General successfully argued that this was unduly lenient and consecutive sentences totalling 23 years were imposed. The Court commented that it was important for courts dealing with such matters to send the message that human trafficking is despicable and will not be tolerated in a civilised society, and that lengthy sentences will be imposed on those involved.

<sup>64</sup> *R -v-ROCI and ISMAILAJ* [2005] EWCA Crime 3404. This follows the logic of *R v Le and Stark* [1999] 1 Cr.App.R.(S) 422 which stated that the entry point for Immigration Act offences was custody and listed the arrangement of illegal entry for strangers as an aggravating feature. See <http://www.sentencing-guidelines.gov.uk/guidelines/other/courtappeal/default.asp?T=Cases&catID=11&subject=IMMIGRATION%20OFFENCES>.



*dealing with rape or serious sexual offences, as opposed to immigration matters, are competent to deal with human trafficking cases, many of which also involve a charge of rape.*<sup>65</sup> The government also commented that the majority of the victims identified in the UK for sexual exploitation are in fact from other EU member States and therefore no immigration issue arises. The Action Plan also highlights the need to develop a greater understanding of internal trafficking, in which immigration offences are unlikely to play a role, which many of the respondents to the consultation on the Action Plan had raised.<sup>66</sup> It also recognises the need to place greater emphasis on combating human trafficking from a human rights perspective and not ‘to see human trafficking exclusively through the prism of organised immigration crime.’<sup>67</sup> At the same time however the Action Plan still highlights the fact that trafficking is tackled as a subset of organised immigration crime in certain instances.<sup>68</sup>

Although immigration offences associated with trafficking do not seem to drive the need for enforcement action and criminal proceedings on trafficking in the UK, the message on this point is still slightly mixed. This could contribute to confusion amongst law enforcement, prosecutorial services and the judiciary as to what is being targeted. From a human rights perspective, it is correct that emphasis is placed on punishing the exploitative conduct of a trafficker, which is when the victim experiences the most harm.

### ***2.2.1.2 Trafficking for labour exploitation***

Trafficking for labour exploitation, including forced labour, slavery and organ trafficking was criminalised under the 2004 Asylum and Immigration (Treatment of Claimants) Act. In contrast with the definition of trafficking for sexual exploitation, the language used to define trafficking for labour exploitation in this Act reflects more closely the meaning of the Palermo Protocol.

The ‘act’ of trafficking is limited to arranging or facilitating the arrival in/travel within/the departure from/ the UK. Again, certain Palermo Protocol “acts”, defined above, are not explicitly included with no reference made to recruitment, transportation or receipt of persons. As yet there is only limited CPS guidance on the interpretation of the law so it can

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<sup>65</sup> ‘Human Trafficking: Guidance to Prosecutors’, June 2006, on file with authors at p. 20.

<sup>66</sup> UK Action Plan at 7.

<sup>67</sup> *Ibid* at 4

<sup>68</sup> Firstly the Serious Organised Crime Agency’s efforts to tackle trafficking are part of their organised immigration crime programmes (Action Plan, p.30). Also the letter from the Home Secretary to Chief Constables in England and Wales, quoted at p.36 Action Plan states: ‘...For local forces, we would see effort against organised immigration crime focusing particularly on the trafficking in human beings for the purpose of exploitation, including exploitation in the sex industry.’

currently only be assumed that it would be defined on its face.<sup>69</sup> Further guidance which is clear as to the breadth and meaning of the concepts of “arranging and facilitating” would be welcome to ensure all the Palermo acts are encompassed. The intentional element of the crime is dealt with by the following elements:

- “(a) he intends to exploit the passenger in the UK or
- (b) he believes that another person is likely to exploit the passenger in the UK or elsewhere.”<sup>70</sup>

S.4(4) provides further explanation regarding the exploitative purposes and the means stating that a person is exploited if:

- “(a) he is the victim of behaviour that contravenes article 4 of the Human Rights Convention (forced labour or slavery);
- (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organs Transplants Act...
- (c) he is subjected to force, threats or deception designed to induce him to (i) provide services of any kind; (ii) to provide another persons with benefits of any kind or (iii) to enable another person to acquire benefits of any kind.
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that:
  - i) he is mentally or physically ill or disabled, he is young or has a family relationship with a person and AND
  - ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.”

These elements deal with the exploitative purposes of forced labour and services, slavery and servitude as required by the Palermo Protocol. The elements of force, threats and deception are dealt with at 4 (c) and coercion/abuse of power/vulnerability is creatively defined at (4(d)). However the means are mentioned only as a way of proving exploitation or an intention to exploit rather than as a necessity for proving the crime itself. This means the crime has a fairly low threshold. e.g. at minimum it could include: arranging the movement of a “young” person within the UK to do something which an older person would refuse to do which might undermine its effectiveness and not reflect the seriousness of the crime envisaged by the Palermo Protocol. The government has commented however that this allows for both investigative and prosecutorial discretion.<sup>71</sup>

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<sup>69</sup> See [http://cps.gov.uk/legal/section12/chapter\\_j.html#18](http://cps.gov.uk/legal/section12/chapter_j.html#18).

<sup>70</sup> ( s.4(1),(2) and (3)).

<sup>71</sup> Written comments from Government to draft report, May 2007.

On the other hand s.4(d) restricts itself to certain clearly defined categories of vulnerability which exclude the possibility of interpretation to be left to the judges. Broader definitions of vulnerability to exploitation have been used in other jurisdictions e.g. “profiting from a situation of physical or psychological inferiority or situation of necessity”<sup>72</sup> and these enable some flexibility to use the law against the different forms of trafficking without being so uncertain as to raise human rights concerns. Additionally, they can apply to the situation of a vulnerable foreigner or immigrant, the most frequent victims of this offence. Other jurisdictions, such as Germany, have taken the step of specifying this category of people in their own legislation as being among the vulnerable groups prone to slavery or working conditions ‘strikingly disproportionate to the working conditions of other workers who perform the same or a comparable activity’.<sup>73</sup>

Given the evidence of the exploitation of foreign labour in the UK and the low number of investigations and prosecutions at the time of writing, such an amendment might be considered at an early review of the effectiveness of the law to contribute to eliminating the phenomenon of trafficking for labour exploitation in the UK.<sup>74</sup>

The government commented that it is committed under the Action Plan to keeping the legislation’s fitness for purpose under review. But that experience of existing legislation has shown ‘*the limitations in prosecuting this offence is trying to prove the intent to exploit due to an absence of evidence rather than deficiencies in the law.*’ In particular it has commented that a major limitation is that victims do not come forward and that whilst they are aware that they are being exploited they are often better off than they would be elsewhere (including in their home countries).<sup>75</sup> More action is clearly needed to ensure that victims of labour trafficking have access to assistance, which the Action Plan notes will be affected by implementation of the Council of Europe Convention.<sup>76</sup> Victims also must be aware of the assistance and remedies, such as compensation, available to them if they were to come

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<sup>72</sup> Art. 601 Italian Criminal Code

<sup>73</sup> Section 233 German Criminal Code (unofficial translation)

Trafficking in Human Beings for the Purpose of the Exploitation of Workers

‘(1) Whoever exploits another person through a coercive situation *or the helplessness that is associated with their stay in a foreign country* to induce them into slavery, serfdom, or debt bondage, or to take up or continue work with him or a third party under working conditions that are strikingly disproportionate to the working conditions of other workers who perform the same or a comparable activity, shall be punished with imprisonment from six months to ten years. Whoever induces a person under twenty-one years of age into slavery, serfdom, or debt bondage, or to take up or continue work as designated in sentence 1 shall be similarly punished.’

<sup>74</sup> For further discussion see OSCE Occasional Paper No. 1 “A summary of challenges facing legal responses to human trafficking for labour exploitation in the OSCE region” by Katy Thompson, Nov 2006.pp8-11.

<sup>75</sup> Written comments from government, May 2007.

<sup>76</sup> UK Action Plan at 6 :respondents to the consultation pointed out that the lack of specialised assistance available to victims of trafficking for forced labour could account for the lack of individuals self-identifying. The decision to sign the ...Convention will impact on this area because the minimum levels of protection and support set out in the Convention apply to all victims of trafficking.’

forward. On balance, the assistance and remedies offered must be better than a life of labour exploitation.

In contrast to this finding, a number of interviewees expressed concern that criminal investigation or prosecution were not always occurring in labour trafficking cases when ample evidence appeared to have been provided.<sup>77</sup> Lawyers acting for victims of forced labour complained about the conduct of the immigration and prosecuting authorities in the UK and their relationship with their counterparts in the country of origin. In one case where the victims claimed asylum, officers from the National Crime Squad refused (without giving reasons) to pursue a prosecution of the traffickers in the UK, or even to discuss with the victims any measures that might be taken for the protection of their families in the country of origin. Instead the intention appeared to be to remove both the traffickers and the victims to the country of origin so that the traffickers could be prosecuted there. Further without the victims' knowledge or consent, the UK authorities disclosed statements, which had been given in confidence by the victims in support of their asylum claims, to the authorities in the country of origin, who then disclosed them to the victims' families. Their lawyer complained that the protection of the victims and their families had been given scant regard by the UK authorities.<sup>78</sup>

Although not clear how often this is occurring in trafficking cases it raises questions about victims' rights to participate in the criminal justice process, confidentiality and to effective remedies.<sup>79</sup> It also raises due diligence questions in international law to investigate, prosecute and adjudicate violations of human rights.<sup>80</sup> Although the case referred to post dates implementation of the law on labour trafficking, it is possible that there was little awareness of the law amongst police and prosecutors. If this were the case, it would appear that more needs to be done to raise awareness amongst law enforcement and the prosecutorial services of this legislation.

The government have commented that in their Enforcement and Compliance Strategy<sup>81</sup> they will use a range of sanctions to ensure that illegal migrants face consequences appropriate to

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<sup>77</sup> Interviews with NGOs including Refugee Legal Centre and Kalayaan.

<sup>78</sup> Information provided by Refugee Legal Centre, May 2007

<sup>79</sup> *OSCE Human Dimension commitments, volume 1*, OSCE/ODIHR 2005 para 3.1.6 'Right to effective remedies', Pp 104.

<sup>80</sup> See *Velasquez Rodriguez* case. The Inter-American Court of Human Rights held that 'an illegal act which violates human rights and which is initially not directly imputable to a State... can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it... The state has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation. (paras 172 and 174-5) See also jurisprudence of the European Court of Human Rights including *Ergi v Turkey*, *Osman v United Kingdom* and *Z and Others v United Kingdom* cited in JCHR Human Trafficking report at 14.

<sup>81</sup> 'Enforcing the Rules: A strategy to enforce compliance with our immigration laws' Home Office, March 2007.

the level of harm caused. For those that cause the most harm, such as traffickers, they have stated that this will mean prosecution, detention and removal or deportation. Where there are sufficient grounds to pursue a prosecution this would always be the ultimate aim and that deportation would not be prioritised over prosecution.

### *Sentencing guidance*

As for the Sexual Offences Act, the maximum penalty is 14 years imprisonment with the CPS Guidelines for Prosecutors envisaging a prison sentence in most cases: “This offence is likely to lead to a significant sentence on conviction. Such offences would almost certainly receive sentences over 12 months and thus should be tried in the Crown Court”<sup>82</sup>.

#### *2.2.1.3 Other law*

There have been no prosecutions of trafficking for labour exploitation under the new legislation. Instead, cases of trafficking for labour exploitation have been prosecuted under other laws with arguably less appropriate penalties, potential for protection or procedures for ensuring compensation of the victims. Typical offences charged have included facilitating illegal migration or VAT offences. In December 2005, Ronald Hamilton, charged with exploiting eastern European workers on farms in Lincolnshire, pleaded guilty to perjury and destroying documents in relation to non- payment of VAT.<sup>83</sup> A Reflex operation in Norfolk arrested a number of Ukrainian gangmasters, who were supplying possible trafficked victims to fish processing factories in Scotland, on offences of facilitating illegal entry into the UK and money laundering.<sup>84</sup> No measures however were taken in these cases to try to identify whether among the 700 or so workers any were trafficked nor were measures taken to protect their rights including their right to access justice and *non-refoulement*, but instead they were returned to their countries of origin.<sup>85</sup>

More recent cases of trafficking for labour exploitation may invite application of new legislation on gangmasters. The Gangmasters Licensing Act creates a compulsory licensing system for gangmasters and employment agencies that supply, or use, workers involved in agricultural activities, shellfish gathering and related processing and packaging activities.<sup>86</sup> The Act makes it a criminal offence to operate as a gangmaster without a license, possess a

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<sup>82</sup> [http://cps.gov.uk/legal/section12/chapter\\_j.html#23](http://cps.gov.uk/legal/section12/chapter_j.html#23).

<sup>83</sup> News of the World, 8 January 2006.

<sup>84</sup> Guardian, 26.March 2004.

<sup>85</sup> Reported during Alliance Conference on Forced Labour, Vienna, November 2005 in answer to questions. Conference notes on file with authors.

<sup>86</sup> Gangmasters (Licensing) Act 2004, ISBN 0 10 541104 3 Full text available at: <http://www.opsi.gov.uk/acts/acts2004/20040011.htm>

false license, use an unlicensed gangmaster, or obstruct enforcement officers. It also enables seizure of convicted gangmasters assets. The Act provides that acting as a gangmaster without a license may lead to imprisonment of up to 12 months and employers entering into arrangements with an unlicensed gangmaster may lead to imprisonment of up to 51 weeks.

The Act itself does not define the standards with which gangmasters should comply in order to be licensed, but provides that the Gangmasters Licensing Authority may grant a license to a gangmaster 'if it thinks fit' (section 7). In addition it should 'ensure the carrying out of inspections as it considers necessary of persons holding licenses' and to 'keep under review generally the activities of persons acting as gangmasters' (section 1(2)). The Temporary Labour Working Group however introduced a Code of Practice for gangmasters as a forerunner to statutory compliance for licencing,<sup>87</sup> and in 2005 and 2006 a number of statutory instruments were introduced regulating the standards and conditions for licensing, summarised in a Gangmaster Licensing Authority publication.<sup>88</sup> The publication indicates that labour providers will have to meet the GLA standards to qualify for a license which it states are '*no more than current legal requirements such as VAT registration, Health and Safety...Other parts of the Standards dealing with issues such as debt bondage, may be less familiar.*' The areas covered by the licensing standards include payment of wages, improper deductions, debt bondage, harsh treatment or intimidation of workers, workers accommodation, hours worked, legality and rights of workers. In relation to debt bondage and harsh treatment of workers, which might be indicators of forced labour situations and trafficking, the guidance states that '*the GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no-one must be retained against their will, whether or not there is a debt owing. If a worker is loaned money by the Labour Provider to meet travel or other expenses in order to take up a position, they must be provided with details in writing of the amount loaned and the agreed repayment terms. If loan repayments are deducted from workers' wages, they must give their written permission for this to be done. Workers should be aware of how to seek redress or make a complaint where there has been harassment.*'<sup>89</sup>

The mission statement of the GLA 'is to safeguard the welfare and interests of workers', but neither the Act, nor the supplementary rules, contain provisions on action to be taken by the Authority to either identify or protect and assist exploited workers who may be the victims of traffickers, even though some of this information may have been entrusted to the Authority in

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<sup>87</sup> A voluntary alliance of trade unions, trade associations, retailers and businesses <http://www.lpcode.co.uk/>

<sup>88</sup>See "Licensing standards: agriculture, horticulture, shellfish gathering and processing, and packagaing for food, fish and shellfish", March 2006, [http://www.gla.gov.uk/embedded\\_object.asp?id=1013018](http://www.gla.gov.uk/embedded_object.asp?id=1013018).

<sup>89</sup> *Ibid* at 10.

face to face interviews with vulnerable persons.<sup>90</sup> Reference is made to the Authority's role in supplying information 'to any person having functions in relation to...(iii) offences committed by workers in connection with or by reason of their doing work to which this Act applies.'<sup>91</sup> Worker's rights information leaflets developed by the Authority in numerous languages, whilst setting out workers' rights relating to pay, leave and health and safety issues, also state that it is the worker's responsibility to be "*legally entitled to work in the UK and should have, or have applied for, a valid National Insurance number.*" They do not include information which could be useful for potential trafficked victims who may be working illegally against their will for a labour provider or may have been kept ignorant or duped as to their legal status. Therefore it appears that possibly for some trafficked victims, who are not legally entitled to work, the Gangmasters Licensing Authority may supply information about their immigration offences to the immigration authorities in the exercise of their functions. As to whether it will be in the public interest to prosecute such individuals for immigration offences will depend on their being identified as 'credible' victims of trafficking by the competent authorities and that the relevant guidance to prosecutors, on discontinuing cases against trafficked victims, discussed below, is being applied. At the same time it is recognised that many trafficked/exploited individuals are EU nationals who generally will be in compliance with immigration law and for whom this concern will not arise.

The Gangmaster's Licensing Authority in its response to the draft report highlighted the fact that 'community impact' assessments are conducted when deciding to take compliance and enforcement action. Such exercises aim to assess the consequences for the community and workers, and if necessary, identify the steps to be taken to mitigate the impact on them. These are operational decisions for the GLA and therefore reference to this activity is not reflected in legislation. Examples of issues taken into account included where the enforcement activity might result in workers being laid off in large numbers creating possible problems for public order or where a largely agricultural community, reliant on the migrant labour provided by a non-compliant gangmaster, would be left without labour which led to the location of an alternative labour provider to take over the migrants contracts.

The Gangmasters Licensing Act clearly represents a step forward in tackling labour exploitation in the UK and the existence of the Authority provides a potential source of assistance for trafficked victims. However the absence of their role in either identifying victims and providing protection to victims of trafficking seems to be a missed opportunity to

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<sup>90</sup> Ibid at 2: 'Evidence of compliance will be assessed from a variety of sources, but particularly by ... face to face interviews with workers.'

<sup>91</sup> GLA reference

extend protection directly to victims of trafficking through a government authority likely to directly encounter such persons. Although the Authority is not resourced to provide welfare services to trafficked and exploited persons, it is recognised that it works closely with the UK Human Trafficking Centre who can provide assistance in identifying and assessing the needs of victims.<sup>92</sup> The work that has also been done to develop indicators of workplace criminality, including indicators of trafficking, should also assist in ensuring that situations of forced labour/trafficking and individuals with irregular immigration status that may be found in those situations, will not be overshadowed by concerns with possible ‘illegal’ migrant working.<sup>93</sup> It would nevertheless be recommended on a review of the Authority’s information leaflets that in addition to the workers’ rights information, information on the rights of potential trafficked persons is provided including rights to assistance, justice, compensation, including unpaid wages and asylum.

The Action Plan also indicates that the legislation on the employment of illegal migrant workers has been strengthened.<sup>94</sup> The Immigration, Asylum and Nationality Act introduces a civil penalty regime for employers together with the introduction of a new offence of knowingly employing an illegal migrant worker due to come into force in late 2007.

#### ***2.2.1.4 Protection in criminal proceedings***

The OSCE Action Plan makes a number of recommendations with regards victims and criminal proceedings. It provides that States should take measures to provide effective protection from retaliation or intimidation for witnesses in criminal proceedings and for their relatives and other persons close to them; that States ensure data protection and the victim’s right to privacy including by avoiding public disclosure of the identity of victims of THB; that States provide legal counselling for victims when they are in the process of deciding whether or not to testify in court; that States permit NGO’s to support victims in court hearings and that States consider the provision of work permits to victims during their stay in the receiving country.<sup>95</sup>

There are no specialised witness protection schemes for trafficked persons acting as witnesses in criminal proceedings, although they are able to access special measures available to witnesses/victims of crime within the criminal justice system under the Youth Justice and

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<sup>92</sup> Written comments from Government

<sup>93</sup> UK Action Plan at 42

<sup>94</sup> UK Action Plan at 16

<sup>95</sup> See OSCE Action Plan chapter III, ss.4.1, 4.3, 4.5 and 4.6 respectively and chapter V ss. 7.4 and 8.3.



Criminal Evidence Act of 1999. The government has reported that witness protection schemes are available in circumstances deemed suitable but no cases have yet met the criteria, although the criteria were not described. At the same time it also reports that schemes have been offered to victims of trafficking but to date have not been taken up. Special measures can include video testimony (including testimony taken by video from abroad in countries which are equipped to do so), use of screens, allowing for the giving of evidence in private, reporting restrictions and clearing the public gallery of the court.<sup>96</sup> However it was reported that victims' identities are not always sufficiently protected and protective measures in court are ad-hoc and not used systematically.<sup>97</sup>

The government reported that trafficked victims would always be considered vulnerable and intimidated and therefore special measures would always be applied for by the prosecutor. However the decision to employ them is a judicial one, and judges do not necessarily have adequate knowledge of the particular needs of trafficked victims. Also of particular concern to service providers and victims' lawyers was the fact that following the provision of testimony in court, victims were expected to return to their country of origin where they risked reprisals and re-trafficking and where there was no guarantee of protection. The risks were seen to be aggravated where victims had collaborated with law enforcement in proceedings. Although acknowledged that victims may apply for humanitarian protection or asylum, it was considered unacceptable that longer term protection in the UK was not on offer following the termination of proceedings, as is the case in the Netherlands and Belgium. The government reported that in their experience most trafficking victims giving evidence choose to return to their country of origin.<sup>98</sup> This however could equally be the result of the lack of alternatives on offer. It remains to be seen whether the residence permit to be introduced with implementation of the Council of Europe Convention will fill this gap.

There is no legal aid or assistance available for victims or witnesses in criminal proceedings in the UK, as under UK law victims are not a party to the proceedings. Victims do however have certain entitlements, none of which though are statutory. The Code of Practice for Victims of Crime sets out an extensive set of obligations and services to which victims are entitled from the police, prosecutors, victim support services, witness care units etc.<sup>99</sup> Young

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<sup>96</sup> See section 25 of the Youth Justice and Criminal Evidence Act on giving evidence in private. On reporting restrictions with respect to child witnesses see sections 49 and 39 of the Children and Young Persons Act 1933.

<sup>97</sup> See summary of responses to consultation on proposals for a UK Action Plan, Home Office, p 13; and Human trafficking ,Joint Committee on Human Rights, p 51.

<sup>98</sup> Written comments from the Government, May 2007.

<sup>99</sup> The Code is made under powers granted to the Secretary of State by section 32 of the Domestic Violence, Crime and Victims Act 2004. Agencies are legally required to comply with the Code and the victim can complain to the Parliamentary Ombudsman if agencies do not comply. The UK Action plan states that to support the requirements under the Code of Practice, they have

victims and victims of sexual offences are considered, *inter alia*, to be especially vulnerable and therefore have more entitlements.<sup>100</sup> Similarly, there are a number of enhancements available to “intimidated victims” which are also defined by the code. This category includes factors like racial and ethnic background. The government has reported that victims of human trafficking are always considered vulnerable and intimidated and eligible for all appropriate support. Those who do not speak English well are not automatically regarded as more vulnerable than other witnesses, despite the obvious challenges they would experience in understanding the court proceedings and the protections available to them, but they would always be afforded an interpreter.

Victims referred to the Poppy project are given access to a range of services, including legal services, although in the majority of cases it appears that legal services in practice have focused on the provision of immigration related advice.<sup>101</sup> Little information however was available as to the extent of legal counselling available to other victims who are not referred to Poppy. The Government also funds ‘Victim Support’, a national charity helping people who have been affected by crime, to provide a range of services to assist victims through the criminal justice process and it has reported that it is normal practice for the police to refer victims/witness to Victim Support.<sup>102</sup> No details were provided as to how many victims of trafficking may have benefited in this way. (Legal advice relating to asylum and human rights claims is discussed below.)

There were reports of victims being accompanied in proceedings by social workers or NGO’s. It was reported that the police can use funds for providing measures they feel necessary to assist the victim and in one case they paid for a social worker to accompany the victim when she returned from her country of origin to give evidence at trial.<sup>103</sup>

Victims are not entitled to work permits during their stay which, it has been argued, would contribute both to victims’ rehabilitation and rehabilitation costs.<sup>104</sup> Other EU countries, including Germany, Italy, Belgium and the Netherlands, do provide victims with the possibility to work during their stay.<sup>105</sup>

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established a Memorandum of Understanding between ACPO, CPS, UKHTC and Eaves Housing for Women. See Action Plan at p. 45.

<sup>100</sup> <http://www.homeoffice.gov.uk/documents/victims-code-of-practice?view=Binary>.

<sup>101</sup> Evaluation of the Victims of Trafficking Pilot Project – Poppy, p. 41.

<sup>102</sup> For information on Victim Support see [http://www.victimsupport.org.uk/vs\\_england\\_wales/index.php](http://www.victimsupport.org.uk/vs_england_wales/index.php).

<sup>103</sup> The Government has also reported that it has piloted a new initiative called ‘Independent Sexual Violence Advisers’ to help victims through the criminal justice system and which it will look to extending for the benefit of victims of trafficking.

<sup>104</sup> Home Office and the Scottish Government, Update to the UK Action Plan on Tackling Human Trafficking, July 2008, p. 29.

<sup>105</sup> For Italy see Art. 18 of the Italian Immigration Law (Law 286/98) available at <http://www.legislationline.org/topics/country/22/topic/14/subtopic/50>. For Belgium see *Ministerial Circular Concerning the Granting of Residence and Work Permits to Foreigners Who are Victims of Human Trafficking (1994)* available *ibid.* at <http://www.legislationline.org/topics/country/41/topic/14/subtopic/50>. For the Netherlands see Bureau NRM, Trafficking in

In conclusion there is a continuing need to protect victims' identities in criminal proceedings and ensure that the judiciary are sensitised about the importance of protective measures in trafficking cases. Although it is accepted that victims of trafficking may apply for asylum in the UK, consideration should be given to providing temporary residence permits to victims following criminal proceedings, especially since safety on return is frequently aggravated by trafficking victims' collaboration with law enforcement. Finally consideration should also be given to extending work permits to victims of trafficking in appropriate cases as a means of supporting their rehabilitation.

### *2.2.2 Asset seizure and compensation for trafficked victims*

There are numerous laws and provisions regarding asset and property seizure, restitution of recovered property and compensation in UK law.

The 2002 Proceeds of Crime Act provides the power to restrain and confiscate the value of criminal assets in all offences. This can be done by the Assets Recovery Agency separate from a criminal prosecution (e.g. where there is no prosecution) and by the Crown Court alongside a prosecution. However it was recently announced that due to the problems encountered by the Assets Recovery Agency in seizing sufficient assets to justify its own existence it will be abolished by 2008 and its powers passed to the Serious Organised Crime Agency and Crown Prosecution Service.<sup>106</sup> The police also have separate civil powers relating to the seizure of cash relating to criminal misconduct.

In respect of confiscation orders in the Crown Court, the Act applies to all criminal convictions but has an extended application where the court is satisfied that the offender has a 'criminal lifestyle' and has benefited from 'his or her general criminal conduct' (Part 2, s.6). An offender has a criminal lifestyle if the offence concerned is a 'Lifestyle Offence' listed in schedule 2 to the Act which includes drug trafficking, money laundering, trafficking for sexual and labour exploitation, pimping and running a brothel. Prosecutors are counselled to carefully consider the impact of accepting an alternative plea in the case of a "lifestyle offence" to ensure that the extended powers to confiscate are not avoided by the offender pleading guilty to a different crime.<sup>107</sup>

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Human Beings, Fifth Report of the Dutch National Rapporteur, Den Haag 2007, Pp. 17. For Germany see Bundesministerium fuer Arbeit und Soziales/Europaeischer Sozialfonds, Expertise zu den Rahmenbedingungen fuer die soziale Betreuung von Opfern von Menschenhandel und deren praktischer Umsetzung in Deutschland, angefertigt von Deliana Popova, 2008, Pp 34.

<sup>106</sup> See 'Assets Recovery Agency Abolished', BBC News, 11 January 2007 at [http://news.bbc.co.uk/2/hi/uk\\_news/6251339.stm](http://news.bbc.co.uk/2/hi/uk_news/6251339.stm)

<sup>107</sup> See Guidance at [http://cps.gov.uk/legal/section21/chapter\\_a.html#\\_Toc40070594](http://cps.gov.uk/legal/section21/chapter_a.html#_Toc40070594)

The Proceeds of Crime Act itself recognises the position of compensation claims in other parallel proceedings. The confiscation claim is made at the end of the sentencing process so as to allow victims to bring prior compensation and restitution claims. Furthermore, if a convicted defendant has insufficient funds to pay both a confiscation order and a compensation order under the Powers of Criminal Courts (Sentencing) Act 2000, compensation takes precedence. The Government has reported that specific guidance issued to prosecutors on human trafficking emphasises the importance of raising the issue of compensation from any property seized prior to a confiscation order, although no reference has been provided to the specific guidance. Earlier research suggested that this legal power has not been emphasised in the guidance to prosecutors nor is there an obvious legal connection between confiscated assets and the payment of a compensation order made under the Powers of Criminal court (Sentencing) Act 2000 (this is different from a civil claim – see below). In general there is much greater emphasis to police and prosecutors to use their new powers to restrain and seize assets than there is to ensure that the victim receives compensation from those same proceeds. It is also recognised however that there are many instances where property and assets are not identified in the UK with money being sent back to the country of origin of the defendants which cannot be pursued by the UK authorities.<sup>108</sup> It is nevertheless recommended, if this is not already the case, that the CPS guidance to Prosecutors is amended to reflect the compensation concerns of a victim when it is dealing with confiscation matters given that the prosecutor is, in the main, the driving force behind the application for restraint and confiscation. (See more below on compensation orders).

Victims of crime are entitled to the possibility of compensation under international and European standards, including the UN Trafficking Protocol, Article 6(6) and the EU Council Framework decision on the standing of victims in criminal proceedings.<sup>109</sup> The Palermo Protocol does not specify the source of the compensation whereas the EU Decision focuses on the possibility to obtain compensation from the offender. The Council of Europe's Convention on the Compensation of Victims of Violent Crimes binds the UK to establish a state compensation scheme "for victims of serious bodily injury or impairment as a result of intentional crime of violence" even where the offender is not prosecuted or punished (Art.2) . The compensation should cover at minimum: loss of earnings, medical & funeral costs and maintenance for dependants (Art.4). From the compensation should be deducted any amounts received from the offender, or other sources (Art.9). There are allowable limitations on the eligibility of the claimant related to the claimant's character (Art.8).<sup>110</sup>

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<sup>108</sup> Written comments from the Government, May 2007.

<sup>109</sup> 15 March 2001, see at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_082/l\\_08220010322en00010004.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_082/l_08220010322en00010004.pdf).

<sup>110</sup> Ratified by the UK on 7/2/90, entry into force 1/6/90.

The OSCE Action Plan provides that States should ‘ensure that the confiscated proceeds of trafficking are used for the benefit of victims of trafficking and consider establishing a compensation fund for trafficked victims.’<sup>111</sup> To take full advantage of opportunities to obtain compensation, the victim should also be informed of their rights to claim compensation and provided with the legal and material assistance needed to secure it.<sup>112</sup> The right to compensation should be made effective through an NRM which recognises ‘compensation payments as a form of justice that can have a positive effect on the victim’s ability to come to terms with what they have experienced’.<sup>113</sup> Service providers in the UK also reported that compensation was of great importance to victims.<sup>114</sup>

There are different routes for obtaining compensation as a trafficked victim in the UK. Firstly upon conviction of an offender, under the Powers of Criminal Courts (Sentencing) Act 2000, the court should consider making a compensation order against the offender ‘to pay compensation (to the victim) for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence’ (s.130). Where compensation is not granted, reasons should be given by the Court. One can be compensated for ‘personal injury, losses through theft of, or damage to property, losses through fraud, loss of earnings while off work, medical expenses, travelling expenses, pain and suffering...’<sup>115</sup> Unpaid or underpaid earnings as a result of the offence itself however are excluded from such compensation orders unless they can be argued to fall within “losses through fraud.” The Prosecutor’s Pledge leaflet published in 2005 makes several “pledges” to victims of crime, amongst which is a “*PLEDGE: On conviction, apply for appropriate order for compensation, restitution or future protection of the victim. The prosecutor will always consider whether there should be an application for compensation or restitution on your behalf. In appropriate circumstances the prosecutor may also encourage the court to impose a restraining order to ensure your future safety. In doing so, they will take into account anything you have said in your Victim Personal Statement.*”<sup>116</sup> However, the CPS’ own Guidelines to prosecutors state that the “The prosecutor may draw the court’s attention to its powers to award compensation and to invite them to make such an order where appropriate.”<sup>117</sup> This guidance to prosecutors could be worded more strongly and grounded in law to ensure that compensation is considered and the relevant information to support the

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<sup>111</sup> OSCE Action plan Chapter III, s.1.5.

<sup>112</sup> See Article 4, EU Council Framework Decision on the standing of victims in criminal procedures. See also article 15 (Compensation and Legal Redress) of the Council of Europe Convention on Action Against Trafficking in Human Beings.

<sup>113</sup> See NRM Handbook on compensation and seizure of criminal gains, Pp 83.

<sup>114</sup> Eaves Housing for Women, Poppy project.

<sup>115</sup> <http://www.cjsonline.gov.uk/victim/compensation.index.html>.

<sup>116</sup> [http://www.cps.gov.uk/publications/docs/prosecutors\\_pledge.pdf](http://www.cps.gov.uk/publications/docs/prosecutors_pledge.pdf).

<sup>117</sup> [http://cps.gov.uk/legal/section15/chapter\\_c.html#10](http://cps.gov.uk/legal/section15/chapter_c.html#10).

claim is prepared in readiness for the court hearing. The guidance goes on to say that: *“Victims may have suffered considerable distress, personal injury or financial loss and they are entitled to have these facts and requests for compensation put to the court. Courts attach considerable importance to the making of compensation orders and must give reasons where they do not make an order. Prosecutors should note what compensation was requested, what orders were made and what comments the court may have made in making an award or reducing the amount ordered.”*

At the same time other guidance, issued to support CPS prosecutors during the Pentameter law enforcement operation provides the following encouragement to enhance compensation for victims *‘Part of having a victim centred approach is to consider compensation for the harm and trauma experienced by victims at the hands of their traffickers. Victims have been turned into slaves, their traffickers have benefited significantly from the victims exploitation leaving the victims with nothing and needing help in many ways, not least financial. There are three standard means by which a victim might seek compensation: through prosecutors requesting a compensation order upon conviction, the victim suing the offender in the civil courts, or if the victim has been injured by violent crime, through the Criminal Injuries Compensation Board (CICB) scheme for criminal injuries. Where there are large / significant sums of money confiscated as a result of POCA applying, there are legislative powers for judges to make awards to victims of crime. However, we are looking at ways to improve and raise the awareness of the judiciary and encourage courts to be pro- active in awarding compensation. The prosecuting advocate should be instructed accordingly to apply for a compensation award at the POC hearing. We are consulting with the Sentencing Advisory Panel with a view to raising the issue of compensation in cases of trafficking within their sentencing guidelines for cases of Human Trafficking.’<sup>118</sup>*

The Sentencing Guidelines issued by the Sentencing Guidelines Council provide guidelines for judges and magistrates on all aspects of sentencing in trafficking cases. In relation to compensation the Sentencing Guidelines state that in all exploitation cases, including trafficking: *‘Confiscation and compensation orders have particular relevance in the context of exploitation offences, where it is extremely likely both that there will be property that can be seized from the offender and also that exploited victims will have been caused a degree of harm that might merit compensation.’<sup>119</sup>* This paragraph explicitly links compensation to the ability to recover assets from the offender. In relation to trafficking in particular the

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<sup>118</sup> *‘Human Trafficking: Guidance to Prosecutors’* (17.02.06), at 23, on file with authors.

<sup>119</sup> Sentencing Guidelines Council Sexual Offences Act 2003 Definitive Guideline, part 6, p. 106, para 6.9 available at [http://www.sentencing-guidelines.gov.uk/docs/82083-COI-SCG\\_final.pdf](http://www.sentencing-guidelines.gov.uk/docs/82083-COI-SCG_final.pdf).

guidelines go on to say that: ‘Where an offender has profited from his or her involvement in the prostitution of others, the court should always consider making a confiscation order approximately equivalent to the profits enjoyed.’<sup>120</sup>

The “Code of Practice for Victims of Crime”<sup>121</sup> which binds a number of criminal justice agencies (including the CPS, police, courts, probation etc) to a comprehensive set of duties to victims of crimes, mentioned above, however does not contain any mention of the duty to inform victims of their right to compensation in the criminal courts or to follow up their claim. It would be recommended that this is rectified in any future revisions.

In 2005 there were no compensation awards made for trafficking for sexual exploitation although 12 individuals were convicted and sentenced to immediate imprisonment.<sup>122</sup> Also no cases of compensation awarded to trafficking victims in criminal cases in the UK could be identified in the course of an OSCE/ODIHR eight-country study on compensation.<sup>123</sup> Also prosecutors interviewed for this assessment did not know whether compensation had been ordered in trafficking cases.

At least one NGO has lobbied the government for an increased use of this power to grant compensation in criminal cases on the basis that it prevents the trafficked victim having to negotiate different sets of procedures where there is a criminal conviction. They also conclude that because victims are repatriated soon after criminal cases, they have a better chance of pursuing a claim in a criminal case than through the CICA.<sup>124</sup>

### *Civil claims against traffickers*

Actions in the civil courts against traffickers are possible for claims on the basis of many types of contractual or tortious causes of action such as fraud, assault or false imprisonment. Claims can be made for unpaid or underpaid wages, material damages such as “recruitment agency costs” or other spurious fees paid, and pain and suffering injury as a result of the exploitation, assault or false imprisonment. Lawyers interviewed considered civil claims to be an appropriate route for obtaining compensation in theory but in practice a victim must first be able to access legal advice and representation to pursue the proceedings and be assured that the trafficker can successfully be sued (there is a cause of action, s/he can be

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<sup>120</sup> Ibid. para 4, page 126.

<sup>121</sup> October 2005. Available at <http://www.homeoffice.gov.uk/documents/victims-code-of-practice?view=Binary>.

<sup>122</sup> Similarly no compensation orders were made for those found guilty of ‘prostitution for gain’ in 2005. See 2005 Criminal Statistics, England and Wales (Home Office) supplementary tables vol 2.

<sup>123</sup> See ‘Compensation for Trafficked and Exploited Persons in the OSCE Region.’ OSCE/ODIHR, 2008 at p.117.

<sup>124</sup> Solicitors International Human Rights Law Group letter/submission to Home Office regarding National Action Plan, 19 March 2007 at note 322.

located, served with papers) and that court orders can be executed and payment actually made. A lawyer acting under a Community Legal Service contract, pro bono, for a union or NGO is likely to be able to give some initial advice to a client on these issues, the chances of success of their claim and cause of action, the nature of civil proceedings. However, to take a case further would require not only the commitment of the victim (it should be borne in mind that proceedings are lengthy and, if they reach trial, require verbal evidence to be given which can be a deterrent for victims) but also the agreement of the lawyer or organisation to provide legal services free of charge or through the assistance of legal help granted by the Community Legal Service. The latter will be dependent both on very restrictive financial eligibility and the lawyer's assessment of the chances of success of the claim.

No civil claims for trafficking cases in the UK were found during the course of the separate OSCE/ODIHR eight-country study on compensation of trafficked persons.<sup>125</sup>

Claims against traffickers under various actions defined by employment law (including unpaid wages) can also be made to the employment tribunal. However there are serious practical problems with this for trafficked persons in that claims must be made within a strict 11 week timescale and migrants may not have access to the tribunal at all. If the employee knew (or should have known) the contract was unlawful (eg. they do not have legal status to work or are using false papers) then they do not have the right to take a claim and can be investigated (including by the immigration authorities).<sup>126</sup> The employment tribunal has in the past refused to consider cases relating to undocumented workers on the basis that the contract had been fraudulently obtained.<sup>127</sup> Although in an earlier case the tribunal rejected claims that the minimum wage did not apply to irregular migrant workers on public policy grounds.<sup>128</sup> Trade unions also reported that irregular migrants would not be protected from deportation when appearing before employment tribunals and therefore many unions would advise them against appearing.<sup>129</sup>

The Criminal Injuries Compensation Authority (CICA) administers a government-funded scheme that provides compensation to victims of violent crime who have sustained physical or psychological injury which is 'not purely minor'. A claim should be made within two

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<sup>125</sup> Op. cit, note 131 at 119.

<sup>126</sup> The position in any particular case is likely to depend on the seriousness of the illegality and the extent to which the employee colluded with the employer in allowing the illegality to take place. (Information in email correspondence with Solicitors Human Rights Group, May 2007).

<sup>127</sup> UK/EAT/0565/03/RN. "The illegal conduct was entirely that of the Applicant and it was the employer who was the innocent participant in what was, in fact, an illegal contract" in relation to a case where an asylum seeker was seeking damages for discrimination.

<sup>128</sup> *Sharma v Hindu Temple* (1991). This case concerned a migrant whose immigration status was indeterminate. He was still permitted to file a claim for unpaid wages because public policy dictated that all workers should be guaranteed a minimum wage.

<sup>129</sup> See 'Legal Aspects of Trafficking for Forced Labour Purposes', *ILO*, 2006, at 34.



years of the crime. The scheme is also available to compensate relatives of a person who died as a result of a crime. The damages available include an award for the injury, and, in limited circumstances, loss of earnings and special expenses. An award can be made where there is no conviction of an offender and the CICA make the decision on the basis of a lower burden of proof. In the process of deciding whether to make an award, or the amount of the award, the scheme takes into account the character (behaviour, co-operation and criminal convictions) of the victim, in particular whether they reported the crime to the police, have assisted in prosecution, have any previous convictions and whether their own actions contributed to them being a victim of crime.<sup>130</sup> While this scheme may be valuable for victims referred to the Poppy scheme, who reported the crime and assist with prosecutions, it may be more difficult to access for other victims especially those whose character is contested. As of May 2007, the Poppy project had referred 12 potential cases of compensation claims to lawyers. In July 2007 CICA made two awards to two young women of Romanian origin trafficked into the UK for the purposes of sexual exploitation. The first claimant was awarded 66,000 GBP for sexual abuse over three years and loss of earnings/opportunity whilst the second claimant was awarded 36,500 GBP based on a similar calculation.<sup>131</sup> Both claimants had given evidence in a criminal case against their traffickers who were convicted and sentenced to 21 years imprisonment and had been provided with the assistance of lawyers acting pro bono.

On the other hand, the Chinese cockle pickers, possible victims of trafficking, who died in Morecambe Bay in 2004, before ever being identified as trafficked, were refused compensation under the scheme.<sup>132</sup> It was reported that ‘the families’ claim has been rejected because the victims voluntarily engaged in an ‘unlawful act’, being their illegal entry into the UK.<sup>133</sup>

Currently legal advice work pertaining to all types of compensation claims is being taken on by a variety of non-governmental organisations (such as the Law Centres, Citizen’s Advice Bureaux etc), unions and lawyers working mainly pro bono. Despite their efforts many trafficked/exploited migrants have difficulty accessing advice and justice due to language difficulties, fears about their immigration status or threats from their traffickers or even peers.

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<sup>130</sup> Paras 13-15 CICS.

<sup>131</sup> Cited in ‘Compensation of trafficked and exploited persons in the OSCE region’ at 113..

<sup>132</sup> Different reports alleged that the immigration authorities were well aware of the exploitation of the Chinese people in question before they died, as well as the danger they faced in their work, but did nothing to prevent it. See ‘MP meets Ministers over cocklers’, BBC news, 12 February 2004 at [http://news.bbc.co.uk/2/hi/uk\\_news/england/lancashire](http://news.bbc.co.uk/2/hi/uk_news/england/lancashire). See also ‘The Scandal of Morecambe’, Daily Telegraph, 13 February 2004 at <http://www.telegraph.co.uk/opinion>.

<sup>133</sup> See <http://www.irr.org.uk/2004/july/ak000009.html>. See also “The compensation scheme is open to everyone in Britain, regardless of their nationality,” said Mark Ryan, a lawyer for the families. “But the families’ claim has been rejected because the victims ‘voluntarily engaged’ in an ‘unlawful act’. They were human beings and deserve to be treated as such. Our fight goes on.” Socialist Worker online, 24 July 2004.[http://www.socialistworker.co.uk/article.php?article\\_id=1020](http://www.socialistworker.co.uk/article.php?article_id=1020).

All of these factors need to be overcome by a properly funded, proactive and coordinated legal support service for potential victims of trafficking. The existence of such a service would be the hallmark of an effective NRM but the absence of which hinders victim's access to advice about their rights and ultimately their access to the justice system itself. It is notable that the UK government is piloting an 'enhanced services' initiative for all victims of crime which will include assistance with applying to the Criminal Injuries Compensation Scheme.<sup>134</sup> Besides this, there are no further actions envisaged in the Action Plan to improve victims access to compensation.<sup>135</sup>

In conclusion, the law provides numerous avenues for the payment of compensation to trafficked victims but compensation orders are not being made in the criminal sentencing process and applications to the civil courts or employment tribunals are not surfacing. This is due to a number of reasons. There is insufficient legal and material assistance available to trafficked victims to ensure they are aware of their rights to compensation and instruct those assisting them accordingly. Also the courts or prosecutors are perhaps insufficiently sensitised to the importance of compensation for trafficked victims and more needs to be done to encourage the order of compensation payments during sentencing especially where confiscation is taking place. Also if assets seized under the Proceeds of Crime Act should be held available for victims pursuing civil claims, then civil claims should be made possible through better legal and material assistance to victims. Better counselling is also needed to ensure that victims make their claims for compensation known to the criminal court during sentencing and prosecutors and police should be put under a duty to ensure victims are advised and their views represented. This is especially important if the trafficker is convicted of a seemingly 'victim-free' crime, such as facilitating illegal entry in which case the court may be unaware of the existence of victims. The issue of obtaining unpaid wages is also important and insofar as labour exploitation is concerned, not controversial. However victims need consistent legal support to recover these losses. Access to legal help and to employment tribunal assistance should be addressed by the UK authorities so that those without legal employment contracts are given recourse to dispute mechanisms to claim their unpaid wages alongside other forms of compensation. Guarantees to hold removal proceedings in abeyance during legal proceedings is also central to supporting victims access to legal redress.

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<sup>134</sup> UK Action Plan at 54.

<sup>135</sup> The Action Plan addresses the issue of compensation succinctly stating only: 'there are various existing means by which compensation for victims can be sought. These include: prosecutors requesting a compensation order upon conviction, the victim suing the offender in the civil courts or, where eligible, on application through the Criminal Injuries Compensation Scheme.' at p.58.

### 2.2.3 *Immigration status*

To secure trafficked persons rights to assistance and justice and prevent future violations of their human rights on return to countries of origin, a legal framework, governing trafficked persons residency status, must be in place. The OSCE Action Plan and Council of Europe Convention requires that States provide a reflection period and temporary or permanent residence permits to trafficked victims subject to immigration control.<sup>136</sup> The NRM also requires this at a minimum.

UK law currently provides no legal entitlements to a period of reflection or residence permit for victims of trafficking subject to immigration control. However entry into force of the Council of Europe Convention will require the UK to provide a reflection period, where removal action is held in abeyance for a minimum period of 30 days and grant residence permits in certain circumstances to identified victims of trafficking.<sup>137</sup> The Council of Europe Convention requires that States Parties provide in their internal law for a minimum reflection delay of 30 days where *'there are reasonable grounds to believe that the person concerned is a victim.'* During this time the person is entitled to assistance and it is not possible to enforce an expulsion order against him or her.<sup>138</sup> Further article 14 provides that a renewable residence permit will be issued to victims where their stay is necessary owing to their 'personal situation' or for the purposes of their cooperation with law enforcement.<sup>139</sup>

The Government has commented that there had been concerns that some of the provisions of the Council of Europe Convention (such as the automatic granting of reflection periods and the issue of residence permits in certain cases for trafficking victims) might open up another route to legal challenge against removal or be used fraudulently. However it now believes that these risks can be managed in the context of an increased drive against irregular migrants and organised immigration crime.<sup>140</sup> It comments further that currently it operates a *'case by case policy in respect of removal of those victims of trafficking who are not lawfully in the UK. Permission to remain may be granted on either a limited or permanent basis and any proposed removal action may be deferred in appropriate circumstances. Where an individual establishes a well found fear of being trafficked and subject to exploitation in their country of origin and this is for a reason covered by the 1951 UN Convention then asylum will be*

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<sup>136</sup> OSCE Action Plan, Chapter V, s.8 and Council of Europe Convention articles 13 and 14.

<sup>137</sup> See UK Action Plan at 56.

<sup>138</sup> Council of Europe Convention on Action against Trafficking in Human Beings article 13.

<sup>139</sup> *Ibid* article 14.

<sup>140</sup> Written comments from Government, May 2007.

*granted. Where a person is not able to establish such a reason but can demonstrate fear of persecution, he or she shall be granted humanitarian protection.'*<sup>141</sup>

Trafficked victims referred to the Poppy project, who are subject to immigration control, are given a period of 4 weeks to assist recovery during which period removal action is held in abeyance. This period is extended if a victim decides to remain on the project and co-operate with the authorities. Between March 2003 and January 2007 the Poppy project supported 162 women, the vast majority of whom were subject to immigration control. In addition trafficked victims who may be needed to act as witnesses in criminal proceedings may be entitled to remain in the UK in accordance with a Home Office policy circular.<sup>142</sup> This provides that *'a person already in the UK but who is subject to removal action (for example as an illegal entrant) may be allowed to remain either in order to assist with investigations of serious crime or to be a witness for the Crown in a criminal prosecution. It is imperative that their immigration status is clarified and resolved at an early stage in order that the possibility of any allegation of inducement or favour regarding their immigration status is addressed.'* It is not clear from Government comments however how many victims of trafficking in total have benefited from this policy.<sup>143</sup>

### ***2.2.3.1 Asylum/Humanitarian protection/Discretionary leave to remain***

The OSCE Action Plan recommends that States ensure the right to apply for asylum and that *'anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of trafficking, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through effective application of the principle of non-refoulement.'*<sup>144</sup>

Victims who consider themselves to be unable or are unwilling to return to their country of origin, often through fear of reprisals, can apply for asylum or human rights protection in the UK, as referred to in the Government comments above. There were numerous reports, from immigration lawyers and service providers that victims of trafficking are applying for asylum

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<sup>141</sup> *Ibid.*

<sup>142</sup> Home Office Circular 02/2006

<sup>143</sup> The government has commented in its written comments that *'A rough estimate would put witnesses supported on this provision to assist in prosecutions of sex related crimes at 20% [of undisclosed total number] although it should be stated that this category may include those in the violent crime/murder grouping. Witnesses have been workers in the sex industry and not necessarily trafficked to the UK.'*

<sup>144</sup> OSCE Action Plan, Chapter V, s.9.

and human rights protection in the UK. Many considered that this was a result of the limited opportunities for longer term protection in the UK other than through the asylum process.<sup>145</sup>

Besides the detailed information available through a review of asylum claimants assisted by the Poppy project however,<sup>146</sup> it was not possible to obtain an overall picture of the success of such claims by trafficking victims. The Government indicated that the Asylum and Immigration Tribunal do not hold data on the number of asylum claims based on trafficking and did not provide any further information from its own sources. It did however comment that the Poppy project review, referred to above, relied on a statistically small sample of claimants from which it was not possible to draw any firm conclusions. It did not indicate whether the figures revealed by the Poppy report though were representative or misleading of the treatment of asylum claims of trafficking victims generally.

Although there were a number of successful asylum cases reported outside those assisted by Poppy,<sup>147</sup> the general impression from immigration lawyers contacted was that applications for asylum and human rights protection by trafficking victims more often ended in refusal and dismissal. Lawyers also indicated that success rates in trafficking cases not supported by the Poppy Project were likely to be substantially lower, despite the fact that whether or not a case was supported by Poppy depended on their acceptance criteria (ie exclusively for women, trafficked into the UK and forced into prostitution) and could be arbitrary (including that neither the Home Office or the trafficked persons lawyer (if she/he had one) referred the case to the Poppy Project). The Government appeared to confirm this tendency in its written comments stating, with respect to the cases referred to in the Poppy study, that they are likely to be *'the strongest cases given that they are accepted by Poppy so are not representative of the greater mass of alleged trafficking claims.'*<sup>148</sup>

Immigration lawyers who had dealt with trafficking victims as asylum claimants described that in their experience asylum claims by trafficking victims were typically refused on initial consideration by an 'asylum caseworker' of the Immigration and Nationality Directorate, although these were sometimes subsequently allowed by the Immigration Appellate Authority

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<sup>145</sup> The UK Action Plan at p. 56 notes that respondents to the consultation had suggested that the current arrangements for providing longer term support for victims of trafficking were inadequate and recommended that victims be granted residence permits to provide them with a level of security and assist with their recovery.

<sup>146</sup> Richards S., *'Hope Betrayed: An analysis of women victims of trafficking and their claims for asylum'*, Poppy Project, February 2006.

<sup>147</sup> For instance Immigration Appellate Authority appeals CMB v Secretary of State for the Home Department (AS/14732/2004), NP v Secretary of State for the Home Department (AS/14723/2004), MI v Secretary of State for the Home Department (AS/14708/2004), BAT (find case reference) and K v Secretary of State for the Home Department [2003] UKIAT 00023.

<sup>148</sup> Written comments from Government, May 2007.

(IAA) or its successor, the Asylum and Immigration Tribunal (AIT).<sup>149</sup> From a sample of 32 Poppy's clients who claimed asylum, 26 were refused during the initial stage.<sup>150</sup> Following a caseworker's refusal, cases are appealed to the AIT. Cases may experience further delay or complications with applications for judicial review of decisions during the process or subsequent appeal to the Court of Appeal. If the AIT determines that an appeal is allowed, there is still a delay whilst the Home Office considers whether to seek to have the case reconsidered by the courts and (assuming the Home Office decides not to) while the Home Office issues status papers.

The Government commented that those whose appeals fail at the AIT can apply for permission to have the original decision reconsidered on the grounds that a material error of law has been made by the Tribunal. *'The application is put, in the first instance, to the AIT. If permission is refused the claimant can 'opt-in' to the High Court for scrutiny of the application, with further rights of appeal to the appropriate appellate court. The Home Office also has the option to appeal against an adverse decision. The entire process from application to appeal rights being exhausted may take anywhere from 6 weeks to over 6 months.'*<sup>151</sup>

Not all decisions of the AIT are reported to the public (although the Home Office, being a party to each claim, receives a copy of the decision in each appeal),<sup>152</sup> but of the handful of trafficking-related asylum appeals that are reported it is notable, although not necessarily indicative, that all ended in dismissal.<sup>153</sup>

A person who fulfils the criteria set out in the 1951 United Nations Convention Relating to the Status of Refugees or 1967 Protocol is a refugee and should be granted asylum in accordance with the UK's international obligations. Where an asylum applicant does not qualify for refugee status, consideration should always be given to whether they qualify for Humanitarian Protection or Discretionary Leave collectively called 'human rights' claims.

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<sup>149</sup> The Asylum and Immigration Tribunal is a tribunal with jurisdiction to hear appeals from immigration and asylum decisions. It was created on 4 April 2005 replacing the former Immigration Appellate Authority. The IAA consisted of two tiers: immigration adjudicators and the Immigration Appeal Tribunal. Immigration adjudicators considered appeals against decisions made by Immigration Officers, Entry Clearance Officers and the Home Secretary. The IAT dealt with applications for leave to appeal and appeals against decisions made by the Immigration Adjudicators. <http://en.wikipedia.org>

<sup>150</sup> Hope Betrayed: An Analysis of women victims of trafficking and their claims for asylum, Poppy Project

<sup>151</sup> Written comments from the government.

<sup>152</sup> The government has commented that of the 16,145 asylum cases determined by Immigration Judges in 2006 only 96 were reported determinations.

<sup>153</sup> See [2004] UKIAT 00251 JO (internal relocation – no risk of re-trafficking) Nigeria; [2004] UKIAT 00115 VD (Trafficking) Albania CG and [2005] UKIAT 00086 MP (Trafficking – Sufficiency of Protection) at [www.ait.gov.uk/Public/SearchResults.aspx](http://www.ait.gov.uk/Public/SearchResults.aspx). A determination is reportable if it follows a hearing or other consideration where the jurisdiction of the Tribunal was exercised by the President, a Deputy President or a senior immigration judge (AIT Practice Directions, 2006) Of those reportable decisions, only a small proportion are actually reported, the decision as to whether to report being made by a committee of Senior Immigration Judges. (From written comments from the Government). Typically reported decisions are chosen to illustrate a point of law, or the correct approach to assessing the safety of return for a particular category of appellant to a particular country.

Leave may be granted on humanitarian protection grounds to a person who would, if removed, face in the country of return a serious risk to life or person arising from the death penalty, unlawful killing, torture or inhuman/degrading treatment or punishment (article 3 of the ECHR). Discretionary Leave may be granted for a limited number of specific reasons including the person has a claim under article 8 of the ECHR (right to family and private life) or article 3 of the ECHR (torture or inhuman/degrading treatment and punishment) on medical grounds or severe humanitarian cases.<sup>154</sup> From the sample of 32 victims assisted by the Poppy project who claimed asylum 9 victims were awarded refugee status and 4 humanitarian protection.<sup>155</sup> There were no reported cases of victims being awarded Discretionary Leave.

In practice, claims for asylum in the UK are made together with ‘human rights claims’ and are based on the same facts. This means that an applicant requests protection from removal to their country of nationality under the Refugee Convention and/or the Human Rights Act. Recent changes in Home Office policy have made the grants of leave and entitlements similar under both frameworks.<sup>156</sup>

### *Convention grounds for refugee status*

In order to qualify for protection under the Refugee Convention a trafficking victim needs to show a well-founded fear of persecution on one of the five Convention ‘grounds’ namely race, religion, nationality, political opinion or membership of a particular social group. It is also necessary to show that the State is unable or unwilling to protect the claimant against such persecution.<sup>157</sup> Membership of a particular social group has become something of a miscellaneous category for asylum claims which do not easily fall within the other convention grounds. In particular it has become the focus for cases of gender discrimination, including trafficked women, following the landmark decision in *Shah v Islam*.<sup>158</sup> A particular social

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<sup>154</sup> See Asylum Policy Instructions October 2006 on: ‘Assessing the Claim’, ‘Humanitarian Protection’ and ‘Discretionary Leave’ at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>.

<sup>155</sup> ‘Hope Betrayed’ at 11.

<sup>156</sup> See ‘Hope Betrayed’ at 12. Recognition as a refugee now brings a grant of 5 years leave, after which time an application for indefinite leave to remain (ILR) can be made. Under the HRA, Humanitarian Protection will normally be granted for up to 5 years, after which time an application for ILR can be made. In cases where the threshold for protection under Article 3 is not met, but where there is a risk of other key human rights being breached, or the applicant is an unaccompanied minor, or there are extreme medical or other exceptional circumstances in the case, then Discretionary Leave will be granted for up to 3 years. Where interference with rights under Article 8 have been claimed for the purposes of considering Discretionary Leave to trafficking victims, the courts have tended to apply a higher test as to the degree of interference required. Thus, for example in the case of a Romanian woman trafficked into prostitution [MP] while she had established some family life during her time in the UK, decisions to interfere with this right in the interests of immigration control would be proportionate in the majority of cases. An application for ILR can be made after 6 years of Discretionary Leave.

<sup>157</sup> According to Article 1A (2) of the 1951 Convention, the term refugee applies to any person who: ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.’

<sup>158</sup> *Shah v Islam* [1999] INLR 144. The House of Lords held in this case that women in Pakistan could qualify as a particular social group for the purpose of the Refugee Convention. This was because women in Pakistan shared an immutable

group must exist independently of the persecution itself however therefore although trafficked women do not qualify as a particular social group, since what defines them is essentially the fact of persecution, they may still belong to a particular group.

The Poppy review indicates that out of 32 asylum claims, 26 of which claimed asylum on the basis of membership of a particular social group, 9 were granted refugee status and the examples provided in the study indicate that asylum was granted on the grounds of belonging to a particular social group.<sup>159</sup> At the initial decision-making stage however asylum claims of trafficked victims on grounds of particular social group had been rejected by immigration caseworkers on the basis that *'women trafficked for the purposes of prostitution do not form a social group within the terms of the 1951 United Nations Convention.'*<sup>160</sup> The Poppy study therefore urged the government in its recommendations to ensure that *'IND (asylum) caseworkers in making initial asylum decisions are informed by the Asylum Gender Guidelines with particular reference to issues of gender-based persecution and the particular difficulties trafficked women face in obtaining protection.'*<sup>161</sup>

The current guidance given to asylum caseworkers regarding gender is contained in an Asylum Policy Instruction, published in March 2004, entitled 'Gender issues in the asylum claim'.<sup>162</sup> The guidance sets out the approach to be taken by Home Office caseworkers in asylum cases raising gender issues, although the guidance is not seen to be an adequate substitute for the more comprehensive 'Asylum Gender Guidelines' referred to above and originally referenced in the Asylum Policy Instruction, although now withdrawn from the AIT website.<sup>163</sup>

The Government reports that there is more training on gender issues as part of the 'New Asylum Model', which introduces a new approach where cases will be managed from beginning to end by individual case owners. *'This should lead to improvements in the timeliness and quality of the decision-making process. We are also issuing specific guidance for NAM caseworkers on trafficking and run a small scale training pilot with the Poppy Project for one of the Central London Asylum Teams.'*<sup>164</sup>

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characteristic (gender), were discriminated against as a group in matters of fundamental human rights and were denied adequate state protection because of this discrimination.

<sup>159</sup> *Ibid.*

<sup>160</sup> See 'Hope Betrayed' at 16.

<sup>161</sup> See Recommendation 4 of 'Hope Betrayed' at 23

<sup>162</sup> Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

<sup>163</sup> The Government reported that IAA/AIT's Gender Guidelines were removed because they are out of date. It acknowledges that the Home Office's guidelines are not the same but were drafted specifically for decision makers. The reference point for the AIT's judiciary was now the Judicial Studies Board's Equal Treatment Bench Book but the relevant chapter on 'Women and Equality' was not seen as an adequate substitute for the IAA Gender Guidelines either.

<sup>164</sup> UK Action Plan at 57.



Following the introduction of the Home Office's gender guidance and training on gender issues it will be important to monitor and evaluate its impact on decision making for victims of trafficking for sexual exploitation.

It is notable that the only reference found to trafficking in the asylum policy instructions is that contained in the Home Office gender guidance which references, very briefly, only trafficking for sexual exploitation and the trafficking of women.<sup>165</sup> An 'asylum process notice' is referred to in the section which would provide supplementary instructions on trafficking but at the time of writing had not been issued. No references could be found either at the time of writing to the handling of asylum claims in the context of trafficking for labour exploitation which clearly represents a gap. It would be recommended that consideration be given also to cases of trafficking for labour exploitation in the asylum process in future revisions of asylum policy instructions.

### ***Risk of persecution/serious harm***

A well-founded fear of persecution or serious harm means that a trafficking victim should be able to show that he or she is likely to suffer the persecution or harm feared on return to their country of origin. The asylum policy instruction 'Assessing the claim' states that *'the decision maker will seldom be able to say with certainty whether or not an applicant will be persecuted if returned to their country of origin. The appropriate test for a decision maker to apply is to consider whether, at the date when they are making their decision, there is a reasonable degree of likelihood of the applicant being persecuted in the country of origin.'* The courts have said that a 'reasonable degree of likelihood has the same meaning as the term 'real risk', which is the test used when assessing whether an applicant will be subjected on return to treatment which violates Article 3 of the European Convention on Human Rights. The standard required is that there should be a '*reasonable degree of likelihood*' or a '*real risk*' of the persecution or serious harm occurring.<sup>166</sup>

Where trafficking cases are not able to demonstrate a Convention reason the consideration of an applicant being re-trafficked alongside risks of ill-treatment on return fall for consideration on human rights grounds. In respect of a case of a trafficked Romanian woman, who had been abducted and trafficked twice, the tribunal considered that the evidence did not support

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<sup>165</sup> Supra at note 164. Section 8 of the API states: 'Trafficking for sexual exploitation involves the movement of a woman into a situation of exploitation using deception and/or coercion....That a woman has been trafficked for sexual exploitation is not, in itself, a ground for refugee status. However some trafficked women may be able to establish a Convention reason (such as membership of a particular social group) and have valid claims to refugee status.'

<sup>166</sup> See IND Asylum Policy Instruction, Assessing the Asylum Claim, October 2006 at p. 3 and API Humanitarian Protection at p.7.

the risk of re-trafficking on her return taking into account the typical kind or recruitment pattern in trafficking cases and the average age of victims.<sup>167</sup> It concluded that *'the Appellant does not face a real risk of being trafficked either by those who trafficked her in the past or anyone else. The country information is clear that the vast majority of those who are trafficked go willingly, hoping for a better job and a better life in a different country. They are deceived as to what will happen to them. The Appellant has not suggested that she could be deceived in this way...The country information does not support the contention that the Appellant now falls within the profile of the majority of women trafficked into prostitution. The majority of victims are between 18 and 24. She is nearly 28 years of age...'*<sup>168</sup>

Similarly in the case of a trafficked Albanian woman, who had also been abducted, it was emphasised in establishing the likelihood of risk that research indicated that victims were likely to be younger than the applicant and that the main method of recruitment tended to involve initial consent on the part of the victim. The tribunal concluded *'If an individual claimant does not allow herself to be tricked into giving her consent to being taken away, then the risk of being trafficked becomes very remote or speculative. Accordingly we are of the view that, absent particular features in a case (such as for example where a claimant's family members have sold the claimant to a trafficker or where on credible evidence it is accepted that an individual who has already been trafficked is at real risk of being pursued by the same group on return) it is not reasonably likely that an individual Albanian girl or woman would be at risk of being trafficked...'*<sup>169</sup>

A further case did consider evidence of being pursued by the same trafficker on return and found that the appellant, a Nigerian minor, would face a serious risk of harm on return. It based its decision on the fact that the trafficker was from the same village as the appellant and *'either she would be there when the appellant returned or it was reasonably likely she would come to learn of the appellant's return. Then there would be the matter of the US\$40,000 debt which this woman had already used physical violence against the appellant in order to extort. Given the apparent ease with which this woman was able to take the appellant when still a minor, it was reasonably likely she would be able to harm or misuse her again.'*<sup>170</sup>

Where it is established that there are risks for the victim returning to her place of origin, the tribunal also considers whether the applicant can relocate inside her country. Immigration lawyers felt that the tribunal was increasingly considering the option of internal flight in

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<sup>167</sup> MP[Trafficking- Sufficiency of Protection] Romania[2005] UKIAT00086.

<sup>168</sup> Ibid.

<sup>169</sup> See VD (Trafficking) Albania at 7.

<sup>170</sup> JO (internal relocation –no risk of re-trafficking) Nigeria [2004] UKIAT 00251.

determining whether it was safe to return a trafficked victim. The asylum policy guidance indicates that there are two points to be considered in assessing the possibility of internal relocation: (i) whether there is a part of the country in which the applicant would not have a well-founded fear of persecution or face a real risk of suffering serious harm and (ii) whether it is reasonable to expect the applicant to stay in that part of the country.<sup>171</sup> In the case of the Nigerian minor discussed above the tribunal held *‘there is no proper evidential basis for concluding that it would be unduly harsh for this appellant to be expected to avoid harm in Nigeria by relocating... there was no evidence that the woman who had trafficked her had the wherewithal to pursue her or to get connections of hers to look out for the appellant in the major cities or elsewhere in Nigeria. Although background evidence shows that trafficking of women is a very serious problem in Nigeria ...it remains that relative to the number of young women in Nigeria it is only a small percentage who are trafficked.’* Other decisions by the Immigration Appellate Authority however found that internal relocation was not possible as *‘the appellants would be at risk wherever they went in Romania as the criminal gangs are very well organised and would be able to locate the appellants.’*<sup>172</sup>

These decisions do not appear to take into account a number of important factors relevant to trafficking cases. Firstly the discussions of re-trafficking do not take into account evidence which suggests that formerly trafficked victims are particularly vulnerable to re-trafficking.<sup>173</sup> Data from the Poppy project indicates the high incidence of re-trafficking amongst its clients, which already suggests that trafficking victims are more vulnerable to re-trafficking than the average person.<sup>174</sup> Equally discussions of re-trafficking must go beyond considerations of what a victim would or would not consent to in normal circumstances, when it is clear that many trafficked victims suffer from long-term mental health problems which impair their assessment of risk or deceptive offers of help. Also relocation of a trafficking victim as a means of avoiding the risk of re-trafficking may potentially have the opposite effect and should normally be considered unduly harsh. Information from service providers indicates that the risk of re-trafficking is increased if a returned victim receives inadequate assistance or support on return. In turn, effective support and assistance is often dependent on the engagement of family and friends who play a central role in a victim’s recovery. Therefore if the tribunal considers the option of relocation of a victim of trafficking it must also take into account the increased risk of re-trafficking which relocation may expose a victim to. It is recognised that judges at the AIT make their decisions based on the evidence placed before

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<sup>171</sup> See API/February 2007 Internal Relocation.

<sup>172</sup> Supra note 147 on forced labour cases.

<sup>173</sup> See IOM Research presented during Alliance conference 2007 – summarised in Global Eye, Issue 2, March 2008.

<sup>174</sup> See Poppy project report, Sex in the City – Mapping Commercial Sex Across London, 2004.

them. Therefore it is recommended that efforts are made that the ‘country reports’<sup>175</sup> reflect facts indicating the preponderance of re-trafficking amongst trafficked victims and the harsh consequences of relocation for a trafficked victim.

### *Sufficiency of protection*

If risks of persecution or human rights violations are shown, the AIT must consider whether the country offers sufficient protection. The asylum policy guidance on sufficiency of protection found that *‘in deciding whether a person is a refugee, protection from persecution or serious harm can be provided by... (a) the State or (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State... Protection shall be regarded as generally provided when the actors mentioned [above] take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting the persecution or serious harm and the [applicant] has access to such protection.’*<sup>176</sup> The onus is on the claimant either to show that they have sought the protection of the authorities and that it was ineffective, or to explain why they have not done so.

Immigration lawyers reported that in their experience many asylum cases of trafficking victims have turned on the issue of sufficiency of protection. 16 of 26 cases supported by the Poppy project and refused at the initial stage were refused in part on the basis that there was a sufficiency of protection in the country of origin. The Court of Appeal in *Bagdanavicius and another v Secretary of State for the Home Department* provides an overview of the factors to be considered in assessing sufficiency of protection. It held that *‘Sufficiency of State protection, whether from State agents or non-state actors, means a willingness and ability on the part of the receiving State to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well founded fear. The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the events.’*<sup>177</sup>

Decision makers use country of information reports published by the Home Office’s Country of Origin Information Service (COIS) to determine if there is a sufficiency of protection. These reports in turn often draw on a variety of external sources such as UNHCR, human rights organisations, the news media and reports produced by the US State Department.<sup>178</sup>

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<sup>175</sup> Referred to in UK Action Plan at 57 which also notes that they are regularly reviewed and updated.

<sup>176</sup> Home Office Asylum Policy Instruction ‘Assessing the claim’, section 7.4.

<sup>177</sup> EWCA Civ 1605 at paragraph 55 cited in supra note 167[ MP]

<sup>178</sup> From written comments from the Government.

Particular attention has been paid in determinations in which of the three tiers countries have been ranked in the US Trafficking in Persons Report. Where the country is ranked below tier 1, indicating that it is not complying with the ‘minimum requirements to combat trafficking’ as proposed by the US, this in many cases has been held to indicate that the country cannot provide sufficient protection from serious harm or persecution of a trafficking victim. In three cases involving victims trafficked for labour exploitation the Immigration Appellate Authority held that *‘considering the Trafficking in Persons Report from Romania 2004 issued by the US State Department...the Government of Romania does not fully comply with the minimum standards for the elimination of trafficking, however it is making significant efforts to do so. The government has made progress in its law enforcement efforts and continued to maintain comprehensive records of trafficking in person data. Corruption among law enforcement authorities remains a serious problem, though the government is working to address it. Support for trafficking victims is not a clear government priority as reflected in the budgetary allocation. I therefore find... there is a willingness by the authorities in Romania to combat human trafficking. I find however that just at this moment in time the Romanian Government has not reached the degree where it could safely be said that the appellants returning to Romania would obtain the sufficiency of protection in their particular cases.’*<sup>179</sup>

Although this is not always consistently the case. In the case of the Romanian trafficked victim mentioned earlier, the tribunal stated that *‘it is significant that the US State Department Trafficking in Persons Report for 2004 places Romania in the same category as Finland, Israel and Switzerland. Although it does not fully comply with all of the minimum standards for the elimination of trafficking, the report expresses the view that the government ‘was making significant efforts to do so.’* The tribunal went on to find that there was a sufficiency of protection in Romania. It noted that a trafficking law and witness protection law were in place in Romania, although the effectiveness of their implementation had been challenged; that there had been increasing convictions of trafficking offences although still few compared to the overall numbers of trafficking victims; that specialised law enforcement officers had been appointed although local law enforcement were still considered corrupt; that efforts were being made to tackle corruption and that shelters and assistance programmes were available to victims, albeit mainly by NGO’s and IOM whose funding and status fluctuated and which could only offer assistance for a limited time to a limited class of trafficked persons, such as women trafficked for sexual exploitation. In connection with the effectiveness of assistance provision, the tribunal noted an IOM press briefing relating to

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<sup>179</sup> AS/14732/204, AS/14708/2004, AS/14723/2004

research from 2 years previously which claimed *'perhaps the most important conclusion of the study (on the effectiveness of assistance programmes to human trafficking victims in Romania) is that many victims can be successfully reintegrated, achieving both social rehabilitation and social independence.'*<sup>180</sup> This evidence was also challenged on the basis that there was little knowledge of what became of victims after short periods of assistance provision and that no long-term follow up to trafficked victims was provided by IOM to justify its claims of 'successful reintegration' of trafficking victims. Nevertheless the tribunal held that Romania generally offered a sufficiency of protection to victims of trafficking.

An equally challenging decision to follow is that in the case of a trafficked Albanian victim.<sup>181</sup> In that case the US Trafficking in Persons Report painted a rather negative picture of Albania's ability to protect. The tribunal accepted that there was evidence of police corruption and complicity in trafficking, that few police were prosecuted and that lawyers and judges were manipulated and bribed permitting traffickers to buy their way out of punishment if arrested. However it then referenced a further report which seemed to suggest that 'remarkable progress' had been made in combating trafficking in Albania, although on balance the report indicated that little progress had been made.<sup>182</sup> It found that *'whilst we accept that the present situation is capable of further improvement, we are satisfied, on the totality of the evidence before us, that there is in general a sufficiency of protection against trafficking in Albania.'*

The Poppy study in the recommendations in its report urges the government to update its country of origin information based on credible evidence from a variety of sources.<sup>183</sup> The Government has reported that to ensure the quality of reports COIS products are reviewed by the Advisory Panel on Country Information, which is independent of the Home Office. It has also stated that if there had been flaws in country guidance cases, such as those described above, they would have been successfully challenged,<sup>184</sup> although this may only happen in relation to points of law and not of fact.

The cases above, although very limited in number, do not suggest that the system in the UK is unfair for trafficked victims, but do highlight the challenges facing judges in arriving at fair and reasonable decisions.<sup>185</sup>

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<sup>180</sup> MP [trafficking sufficiency of protection] Romania [2005] UKIAT 00086.

<sup>181</sup> VD (trafficking) Albania CG[2004]UKIAT 00115.

<sup>182</sup> See Trafficking in Human Beings in South Eastern Europe, UNICEF/UNOHCHR/OSCE/ODIHR, 2003 at 48.

<sup>183</sup> See 'Hope Betrayed' at 23.

<sup>184</sup> Written comments from Government, May 2007.

<sup>185</sup> The UK Action Plan at pp 56-57 also acknowledges that some respondents to the consultation felt that improvements to the current asylum process were required to ensure that the realities of trafficking, including the particular vulnerability of women trafficked into sexual exploitation, are taken into consideration.

## *Credibility*

Interviewees commented that for all immigration claimants, including trafficked persons, there were considerable difficulties in establishing credibility in asylum proceedings. The same considerations of credibility apply to both asylum and human rights claims. The Poppy project reported that decision-makers routinely refuse claims on the basis of credibility where 10 out of 26 of Poppy's cases refused at the initial stage were refused wholly or partly for this reason.<sup>186</sup>

The credibility of an applicant is very much premised on the early disclosure of relevant facts. Home Office guidance to asylum caseworkers states that: *'The burden of substantiating a claim for international protection is on the applicant.[...]When the Secretary of State considers a person's asylum claim, eligibility for humanitarian protection or human rights claim, it is the duty of the applicant to submit as soon as possible all material factors needed to substantiate his asylum claim.[...]It is possible for an applicant to substantiate his application and satisfy the burden of proof ... provided he can provide a coherent and plausible account of his experiences which is not contradicted by available information relevant to his claim. For example, an applicant does not have to provide evidence of past torture for a claim that torture took place to be accepted.'*<sup>187</sup>

The Government commented that it expects applicants to provide all the material facts to substantiate their claim as soon as is possible. It also draws attention to the Home Office gender guidelines which state that 'if an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information, for example feelings of guilt, shame, concerns about family dishonour.'<sup>188</sup>

This statement indicates that, although acknowledged in policy guidance, late disclosure may still be held against a trafficked person which seems to conflict with the rationale for a reflection delay for victims. Research on the physical and psychological health of trafficked women and girls consistently shows that when women get away from their traffickers, their mental health symptoms do not reduce for at least 90 days. They therefore need time to trust the authorities, especially the police, and time to regain their mental health.<sup>189</sup> The gender

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<sup>186</sup> Ibid at 18. See also 'Get it right: How Home Office decision making fails refugees', *Amnesty International*, 2004 at p.19, which notes systemic failings in Home Office caseworkers' assessment of credibility, leading to a number of asylum claims being wrongly refused for poor reasons. [http://www.amnesty.org.uk/uploads/documents/doc\\_15239.pdf](http://www.amnesty.org.uk/uploads/documents/doc_15239.pdf).

<sup>187</sup> See Asylum Instruction on Assessing Credibility in Asylum and Human Rights Claims.

<sup>188</sup> Written comments from government.

<sup>189</sup> Waugh L., *Why trafficked women must be 'perfect'*, *New Statesman*, 4 September 2006, citing Dr Cathy Zimmerman.

guidelines, published by the IAA in 2000 to provide guidance to immigration adjudicators and the Home Office's guidelines on gender, also recognise the effects of trauma on victims who have been sexually assaulted which can lead to '*persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive loss of control and memory loss or distortion.*'<sup>190</sup> These symptoms may clearly influence the perception of credibility of a trafficked person and must be taken into account. Early disclosure of information likely to determine whether someone is a trafficked victim is also incompatible with the recommendations of the NRM, which integrates the process of identifying a victim of trafficking in a programme of assistance and protection.<sup>191</sup>

In trafficking cases, the rationale behind the need for a period of reflection in providing assistance to the Home Office in support of a claim for asylum is identical to that recognised as appropriate in respect of the victim's possible cooperation with the police. Also in relation to the need for a period of reflection before an asylum claimant can disclose a full account, there would appear to be no basis for the Home Office to distinguish in its approach to the assessment of the credibility between claims brought by those supported by the Poppy Project and those who are not. It is therefore recommended that the Home Office guidance to asylum case workers be amended at a future review to ensure its compliance with the principle of reflection delays for trafficked persons so as not to undermine assessments of credibility.

### ***Fast track procedure***

Many asylum claims are dealt with under a fast track procedure, which deals with any claim for asylum, (brought by a national of any country) which appears on initial screening to be one that is capable of being decided quickly. Applicants are detained and their cases are decided in a matter of days.<sup>192</sup>

The fast track procedure was introduced by the Nationality, Immigration and Asylum Act of 2002, and is one of the measures aimed at greater efficiency within the UK asylum process. Fast tracked applicants are detained in immigration detention as it has been argued that this

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<sup>190</sup> Nathalia Berkowitz and Catriona Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, Annex 1. See also Asylum Policy Instruction 'Gender Issues in the Asylum claim' at 12, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>.

<sup>191</sup> See NRM Handbook at 17 and discussion of residence status Pp. 88.

<sup>192</sup> For more information on the Fast Track process see 'Enforcement Instructions and Guidance', chapter 55.4 at [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55?view=Binary)



allows for a greater number of removals of failed asylum applicants.<sup>193</sup> During the course of this assessment examples of trafficked victims detained under the fast-track procedure were brought to our attention.<sup>194</sup>

There have been two main models for detained fast tracking, both aimed at decreasing the amount of time it takes before the Home Office are in principle able to remove a failed asylum seeker. This is achieved by speeding up decision-making (which almost invariably produces a rejection of the claim), and then by either removing rights of appeal to the AIT (in cases the Home Office certify as ‘clearly unfounded’) or by speeding up the appeals process. The result is that a process that normally takes months can be completed in a matter of days.

The Home Office publishes a list of countries and considers that claims made by nationals of those countries are likely to be suitable for detained fast track processing. The countries include Albania, Bangladesh, Bolivia, Brazil, Bulgaria, Cyprus, the Czech Republic, Ecuador, Estonia, Jamaica, Hungary, Lithuania, Macedonia, Malta, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Ukraine and India. Lawyers indicated that the practical effect of a case being fast-tracked is that there is a prima facie presumption against allowing an asylum claim, which has to be rebutted by the applicant. Research based on observing appeal hearings at Harmondsworth immigration removal centre indicated that the vast majority (99%) are initially refused.<sup>195</sup> Refusal under this process leads to a claim being determined as ‘manifestly unfounded’ which leads to refusal of any monetary assistance under the National Asylum Support Service (NASS), removal and the loss of the right of in-country appeal.

Service providers and lawyers considered this process completely inappropriate for trafficking victims. The Government has commented that it would not accept a person identified as a victim of trafficking into the Fast Track process. As for new entrants into the Fast Track, not previously identified nor with any indication of being a victim of trafficking, it states that it would consider that the ‘*screening interview, information on the file and the very thorough Statement of Evidence Form and interview conducted would give an indication as to whether someone is potentially a victim of trafficking*’.<sup>196</sup> Lawyers consulted for this

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<sup>193</sup> See ‘*Working against the clock: Inadequacy and injustice in the fast track system*’, Bail for Immigration Detainees, July 2006 based on research conducted at Harmondsworth immigration removal centre which holds up to 500 men..

<sup>194</sup> Examples of trafficked victims detained under the fast-track procedure brought to our attention during this research include MP, supra note 167 and Romanian forced labourer cases supra note 179

<sup>195</sup> Supra note 193.

<sup>196</sup> Written comments from government May 2007.

study however expressed concern that the screening interview would not identify trafficking victims, or screen out 'good' cases, as no questions are asked at screening that go to the substance of a claim for protection. Also by the time the Statement of Evidence form and interview are conducted it was reported that the person has already been fast tracked. It was therefore not clear what mechanisms existed to take persons out of fast-tracking once they were in.<sup>197</sup> The Government reported that historically 10% have been taken out of the process without receiving a decision but did indicate the reasons for such withdrawals.

The Government also indicated that each entrant into the Fast Track receives (unless privately instructed) guaranteed legal representation, run by the Legal Services Commission,<sup>198</sup> although in recognition of the need for reflection delay for victims to trafficking it is unlikely that legal representation under the duty solicitor scheme would lead to early disclosure. Reference was also made to the Government's recently issued enforcement instructions and guidance used by the UK Border Agency which refer to the fact that persons trafficked for sexual exploitation are one such group of persons who should never enter the fast track.<sup>199</sup> In the chapter entitled 'Identifying Victims of Trafficking' the instructions state 'Officers should be aware that victims of trafficking for sexual exploitation are likely to be classified as vulnerable persons and detention will *not normally* be appropriate.'<sup>200</sup> A further instruction on which cases may be entered into the Fast Track process specifically excludes cases supported by the Poppy Project. It provides: '*UKBA policy is that certain individuals are unlikely to be suitable for entry or continued management in the DFT or DNSA processes. These persons are ...those for whom there is independent evidence from a reputable organisation (eg. the Poppy project) that they have been a victim of trafficking.*'<sup>201</sup> There are no similar instructions or guidance however with respect to the treatment of victims of labour trafficking and it is not clear who, besides the Poppy project, is reputable enough to provide evidence that a person is trafficked. Chapter 55 of the guidance which lists persons considered unsuitable for detention makes no reference to victims of trafficking.<sup>202</sup>

Detention of trafficked victims who are entitled to protection and assistance, is incompatible with OSCE and international commitments. Although it is commendable that victims who have been identified by Poppy as victims of trafficking will not be fast tracked it is not clear whether this extends to other victims. Lawyers indicated that Home Office practice appears

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<sup>197</sup> Email exchange with Refugee legal centre, June 2007.

<sup>198</sup> The Legal Services Commission are responsible for the legal aid scheme in England and Wales.

<sup>199</sup> Written Comments from government.

<sup>200</sup> Chapter 9, Enforcement Instructions and Guidance.

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectiona/chapter9?view=Binary>

<sup>201</sup> DFT and DNSA Intake Selection (AIU Instruction) available at <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary>.

<sup>202</sup> Chapter 55.10, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55?view=Binary>

to be to remove trafficked victims from the fast track process where they have been accepted by the Poppy Project, Helen Bamber Foundation or Medical Foundation. Those who are not accepted (because for instance they do not fit the Poppy project's criteria or because no referral was made) are forced to pursue their cases in detention under conditions where the vast majority will fail.

The Borders Authority needs to ensure that its officers are able to screen out trafficking cases from asylum claims that otherwise might be fast-tracked and that if some cases still slip through that there are established procedures in place to ensure that a person can be withdrawn from the process. Again initial assessments need to be compliant with the need for victims to be offered a reflection delay.

Of the cases discussed during this assessment, some had been dealt with initially under the fast track procedure. Immigration lawyers had to apply to remove their clients from the procedure and associated immigration detention through judicial review of determinations that claims were manifestly unfounded. Reviews and subsequent appeals before the tribunal however often led to a delay in applicants being granted bail from immigration detention, in spite of AIT Practice Directions.<sup>203</sup> Expert medical evidence sought in some cases indicated that the detention of post traumatically distressed victims of trafficking was aggravating mental health problems and seriously undermining rehabilitation.<sup>204</sup> Reviews and subsequent appeals were also seen to take their toll on victims of trafficking with repeated hearings of facts, often painful and traumatising to the victim.

### *Legal advice*

Central to all these claims is good legal advice. Victims referred to the Poppy project in many cases have sought legal advice in connection with claims for asylum and Poppy reported to have built up a good rapport with local community law centres and refugee legal centres. Other victims, who were not necessarily clients of Poppy, had received legal assistance through the Refugee Legal Centre, Immigration Advisory Service, Asylum aid and independent solicitors amongst others. Restrictions placed on legal aid for asylum applicants however concerned many interviewees and was the subject of numerous reports. Restrictions were resulting in many asylum applicants being unable to obtain access to good quality legal advice and representation at all stages of the asylum process.<sup>205</sup> Also there were concerns with the quality of legal assistance available. For those in immigration detention, whose

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<sup>203</sup> AIT Practice Directions state that: An application for bail shall, if practicable, be listed for hearing within three working days of receipt by the Tribunal of the notice of application.

<sup>204</sup> Information shared by Refugee Legal Centre of trafficked victims assisted.

<sup>205</sup> Human Trafficking, Joint Committee on Human Rights.

claims have been fast tracked legal help should be available through a duty solicitor scheme at Harmondsworth and Yarl's Wood detention centres or through representation by on-site representatives at Oakington detention centre.<sup>206</sup> However, for many other immigration detainees, amongst which may also be trafficked victims, there are very limited opportunities to access legal advice and the Chief Inspector of Prisons has in a recent report raised concern at the numbers held in immigration detention that had no access to legal advice.

In conclusion concern was expressed by interviewees about how few cases of trafficking immigration lawyers were seeing, and that this was considered due to the failure of immigration authorities to identify trafficked persons.<sup>207</sup> In particular, the quality of decisions by asylum caseworkers was considered poor, and lacked understanding of the position of trafficked persons. Limitations in the guidance given to Home Office caseworkers and immigration officers on trafficking, including for labour exploitation, the decision-making process (particularly in the assessment of credibility) and the fast tracking of asylum claims brought by trafficked persons are all matters of concern. The fact that detention is never appropriate for trafficking victims is not adequately reflected in practice guidance. The fact that the Poppy project has enjoyed high success rates for the asylum claims of its clients may indicate that such claims are subjected to more appropriate procedures, resulting in the credibility of the claim and its subsequent acceptance by the Home Office and/or the AIT. However the Poppy project's limited acceptance criteria needs to be acknowledged and efforts made to ensure that all victims of trafficking, are treated equally in asylum claims.

#### **2.2.4 Protection and assistance**

The OSCE Action Plan recommends that States not only adopt legislation to prohibit trafficking and prosecute traffickers but also provide a legal basis for rendering assistance and protection to trafficked victims.<sup>208</sup> The human rights approach of the NRM places protection of trafficked persons rights first, irrespective of their collaboration with the authorities.<sup>209</sup>

In the UK Action Plan the government recognises that '*a strong enforcement arm [in anti-trafficking] is not effective unless the corollary victim protection and assistance is in*

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<sup>206</sup> Yarl's Wood is the main removal centre for women and families in the UK with up to 405 places. Oakington is for male detainees with a capacity of 352 beds. For more information see <http://www.ukba.homeoffice.gov.uk/managingborders/immigrationremovalcentres/>.

<sup>207</sup> It should be noted though that there is very good guidance on the identification of trafficked victims of sexual exploitation in the Enforcement Instructions and Guidance to immigration officers discussed under section 4.2.3 below.

<sup>208</sup> OSCE Action Plan chapter V, s.1.1.

<sup>209</sup> See NRM Handbook: Principles and Best Practices for the Implementation of NRMs referencing United Nations High Commissioner for Human Rights 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' 2002. Also OSCE Action Plan, Chapter V, s.4.2 'Providing access to shelters for all victims of trafficking, regardless of their readiness to co-operate with authorities in investigations.'

*place....This focus on victims has now been taken further through two important decisions. Firstly we have decided to sign the Council of Europe Convention on Action Against Trafficking....'*<sup>210</sup>

The Action plan states that once the Convention is implemented, any person whom the authorities believe to be a victim of trafficking will be entitled to a period of recovery and reflection of 30 days. During this period, victims will be entitled to assistance including secure accommodation, appropriate psychological assistance and access to counselling and emergency medical assistance. The Convention also provides an avenue for victims to apply for a renewable residence permit, if for example, their stay is necessary for the purposes of their cooperation with the competent authorities in an investigation or criminal proceedings.<sup>211</sup> Until the Convention is implemented however there is no specific legal basis for protecting and assisting trafficked victims in the UK. A recent Parliamentary report argues that the legislative framework on trafficking must reflect a human rights approach and that the protection of victims of trafficking should be incorporated into and placed at the heart of the legislative framework.<sup>212</sup> It notes that the failure to enforce and promote the rights of victims means that victims often faced immigration enforcement action such as detention and removal and were subject to restrictions placed upon access to health care, public funds, accommodation and other relevant support.<sup>213</sup>

It is not clear from the Action Plan whether new legislation to provide for access to healthcare, accommodation and counselling for trafficking victims will be introduced, as part of the implementation proposals for the Convention. There is of course de facto support and assistance, as outlined earlier, under the Poppy project for those trafficking victims meeting Poppy's criteria, the first four weeks of which is unconditional assistance.

During the course of this assessment there were reports of victims being prosecuted under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004 which makes it an offence to enter the UK without valid passports and visas. The UK Action Plan also acknowledges that there have been cases where victims of trafficking have faced charges under immigration legislation for offences committed whilst in a coerced situation.<sup>214</sup> The application of this provision to trafficked victims would conflict with OSCE recommendation

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<sup>210</sup> UK Action Plan at 5.

<sup>211</sup> UK Action Plan at 10

<sup>212</sup> Human trafficking ,Joint Committee on Human Rights, para 118.

<sup>213</sup> Ibid, para 117.

<sup>214</sup> UK Action Plan at 57.

that victims of trafficking are not subject to criminal proceedings as a result of having been trafficked. The UK action plan states that victims of trafficking should not normally be charged with immigration offences under this section and that the CPS may discontinue such cases on public interest grounds. It proposes that: *'increased awareness raising, guidance and training will reinforce the message that victims of trafficking should not be treated as immigration offenders, which will hopefully lead to a decrease in these incidents.'*<sup>215</sup> The CPS has also issued instructions to crown prosecutors to *'alert them to cases where victims of human trafficking may be charged with immigration offences whilst they are being coerced by another.'*<sup>216</sup> The instructions state *'Victims of human trafficking may commit the following immigration charges whilst they are being coerced by another: using a false instrument under section 3 of the Forgery and Counterfeiting Act 1981; possession of a forged passport or documents under section 5 of the Forgery and Counterfeiting action 1981...failure to have a travel document at a leave or asylum interview under section 2 Asylum and Immigration (Treatment of Claimants) Act 2004. When reviewing such a case, it may come to the notice of a prosecutor that the suspect is a 'credible' trafficked victim who is assisting in a criminal investigation or prosecution against those responsible for, or connected with, trafficking'* It further provides *'for these purposes 'credible' means that the investigating officers have reason to believe that the person has been trafficked. In such circumstances, prosecutors must consider whether the public interest is best served in continuing the prosecution for the immigration matter'*

The difficulty here lies in what constitutes a 'credible trafficked victim' and who decides, if the individual was not given the opportunity to be 'identified' before, so has not shared information with an investigating officer, or if she or he possesses little evidence to lead to the identity of the trafficker or to merit an investigation, or the investigating officer is not very well briefed on identifying victims. It should be noted that the guidance to prosecutors allows for consideration of the *'nature and quality of the assistance given'* by the trafficking victim in ascertaining where the public interest lies. In such cases one wonders how far investigating officers will go in believing that the person has been trafficked if it is unlikely that criminal proceedings will be brought. One would hope that the victim is still given the benefit of the doubt.

The instruction also provides that where information has come to light from other sources, such as NGOs, who suspect the victim to be trafficked, this is insufficient to satisfy concerns with credibility. Instead the prosecutor should : *'request the investigating officer make*

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<sup>215</sup> UK Action Plan 2007

<sup>216</sup> Human Trafficking' Circular to Crown Prosecutors, 25 May 2007, on file with authors.

*enquiries and obtain information in connection with the claim that the suspect has been trafficked (this should be done by contacting the UK Human Trafficking Centre); re-review the immigration case in light of any fresh information or evidence; if new evidence obtained supports the claim that the suspect has been trafficked and committed the immigration offences whilst they were coerced, give consideration to discontinuing prosecution.'*<sup>217</sup>

In July 2007 two cases were brought to the attention of the OSCE/ODIHR, following publication of the instructions to prosecutors on the discontinuance of cases for trafficking victims. Both these cases concerned conflicting opinions as to the person's credibility as a trafficked victim. The Poppy project believed that the individuals charged with immigration offences were trafficking victims. As already illustrated earlier, the support of asylum claimants by the Poppy project is sufficient to ensure withdrawal of such individuals from fast tracking and weighs heavily in determinations of credibility in asylum and humanitarian protection proceedings. The prosecutors, and investigating officers however, were not convinced (or perhaps were not aware of the guidance) and the proceedings against the individuals continued.<sup>218</sup> This seems to represent a departure from earlier practice of UK authorities, who had respected the expertise and knowledge of organisations providing services to trafficking victims by recognising their role in assisting in the identification of victims.<sup>219</sup> It is also quite usual for such service providers to provide training to law enforcement on identifying victims of trafficking again in recognition of their expertise on these issues. The process of identification, which is discussed in the next section, goes to the heart of an NRM which urges that identification is conducted in cooperation with civil society.<sup>220</sup> The Council of Europe Convention also seems to provide as much.<sup>221</sup> It is hoped that appropriate weight is given to the opinion of reputable service providers for victims of trafficking in future in determining trafficked victim status.

Finally to guard against discrimination in providing assistance and protection to trafficking victims, it will be important that the UK authorities also ensure that the test of 'credible trafficked victim' will be no more onerous for victims who might be immigration offenders than that required of a victim who is not in breach of immigration regulations. It would also be expected that a 'credible trafficked victim' would be subject to the same test of credibility

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<sup>217</sup> Circular to Crown Prosecutors supra note 212.

<sup>218</sup> The OSCE/ODIHR and OSCE Special Representative on Combating Trafficking in Human Beings addressed a letter, dated to the UK's Attorney General expressing its concern with these two cases to which the UK authorities failed to reply.

<sup>219</sup> It should be recalled that during the 'Cuddles' raid it was sufficient for a Poppy social worker to determine that certain women held in immigration detention were trafficking victims for these individuals to be released into Poppy's care. From email exchange with Poppy.

<sup>220</sup> See NRM Handbook Pp 59.

<sup>221</sup> Council of Europe Convention on Action Against Trafficking in Human Beings [CETS 197], Art. 10.

as a trafficking victim who was not charged with immigration offences, in order to benefit from a reflection delay and possible residence permit.

### *Assistance*

Under the NRM three components are needed to form a comprehensive support and protection programme for presumed trafficked persons. They include financial assistance, shelter and specialised services. The process of referring victims to these services is the principal purpose of an NRM.

The only coordinated programme of assistance available to female victims of trafficking of sexual exploitation is provided under the Poppy project, which has been funded by the Home Office since 2003. Women referred to the project are entitled to a de facto reflection delay of 4 weeks, following which they must decide whether or not to cooperate with law enforcement. If they cooperate women may continue to receive support services during the course of criminal proceedings and/or apply for asylum in the UK.

In keeping with OSCE recommendations on assistance to trafficked persons the project offers safe accommodation, food/subsistence allowance, health assessment, medical treatment (including dental treatment), counselling, legal advice, support of asylum and immigration processes, liaison with police & immigration services, access to education and English classes, support with the voluntary return scheme, when applicable.

The women are able to make a selection from the services offered. Given the fact that the needs of trafficked women for accommodation and support are usually long-term, the project was often full and unable to accept new referrals. This was expected to be partially remedied with the funding of ten additional 'step-down' spaces for women in long-term support to gradually regain their independence from the service.<sup>222</sup>

The organisation also tries to support other trafficking victims who do not meet the project criteria when it has capacity, although such service provision would not then fall within the government funded programme. Between March 2003 and January 2007 the Poppy Project had supported 162 women.

During Operation Pentameter police forces were asked to assess other possible voluntary sector providers who were in a position to accommodate victims identified. The Action Plan

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<sup>222</sup> *£2.4 million to help UK human sex trafficking victims* accessed at <http://www.24dash.com/content/news/viewNews.php?navID=7&newsID=4614>



states that as a result there are now a number of independently-funded voluntary organisations that have set up projects to support victims.<sup>223</sup> In guidance issued to prosecutors, which focuses on trafficking for sexual exploitation, and was developed ‘to assist prosecutors in the CPS response to Operation Pentameter’ it states that ‘the restrictive eligibility criteria of the POPPY scheme, limited spaces, and the length of time until prosecution, has seen the South Yorkshire and Metropolitan Clubs and Vice Unit using hotel and hostel accommodation where necessary for victims of trafficking and providing basic care through making contact with health organisations and welfare providers. Church based organisations have also provided support, for example the City Hearts project in Sheffield and CHASTE<sup>224</sup> in Cambridge who are currently developing the Sanctuary project which will provide accommodation for a small number of victims of trafficking. Presently, police will make enquiries as to potential accommodation options on a case by case basis, acknowledging that emergency accommodation isn’t always as secure or specialised as is ideal.’<sup>225</sup>

The Action Plan also refers to the Government’s coordinated strategy for tackling prostitution, which promotes the development of specialist services for those exiting prostitution, which will incorporate into the services offered the specific needs of victims of internal trafficking for sexual exploitation in the future. It also references the Cross-Government Sexual Violence and Abuse Action Plan published in 2007 which aims to increase access to health and support services.<sup>226</sup>

There are currently no services that support men or that specifically address trafficking for labour exploitation. However the Action Plan states that it will consider piloting provisions for victims of trafficking for forced labour to evaluate the type and level of support needed.<sup>227</sup>

In terms of minimum standards of assistance, the Action Plan notes that it is important to maintain a level of consistency as the network of service providers increases but that national guidance for minimum standards of support are still to be developed.<sup>228</sup> The UKHTC business plan also notes that it will work with partners to develop guidance on minimum standards for support services for victims of sexual exploitation.<sup>229</sup> One would also hope that experienced service providers are contributing to these processes.

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<sup>223</sup> UK Action Plan at 52

<sup>224</sup> The NGO Churches Alert to Sex Trafficking Across Europe (CHASTE) also accepts referrals and provides services to trafficked persons including safe housing social, health, translation and legal representation. More information about the organisation, its activities and future plans accessible at [http://www.chaste.org.uk/cst\\_11what%20we%20do.html](http://www.chaste.org.uk/cst_11what%20we%20do.html).

<sup>225</sup> ‘Human Trafficking : Guidance to Prosecutors (Undated)’ at 12.

<sup>226</sup> *Ibid* at 54 -55.

<sup>227</sup> *Ibid* at 54

<sup>228</sup> *Ibid* at 53

<sup>229</sup> UKHTC Draft Business Plan, 2007/2008 at 7.

It was also reported during this assessment that many trafficked victims are dependent on their own resources, helped in the community by friends or receive ad-hoc assistance (such as through local charities or churches). If they are in breach of immigration control and have come to the attention of the authorities, they may be detained in immigration detention before removal. They may of course apply for asylum or human rights protection considered earlier. For those seeking asylum, assistance is available from the National Asylum Support Service (NASS), providing certain eligibility criteria are met. NASS assistance includes the provision of accommodation and weekly payments of £35 subsistence but it is not available to claimants initially refused under the ‘fast track’ procedure, as discussed above.<sup>230</sup>

There are limited and complicated provisions for local authorities to provide assistance for those who it can be shown are destitute and have special needs. Local authorities also have the right to provide temporary assistance, including housing and assist in the return of EU nationals to their countries. Although EU nationals have generous rights to move freely within the EU, their right to reside and to access welfare benefits is restricted. In brief their right to reside is determined by their being ‘workers’ in which case they also have access to social assistance, social security, social housing, healthcare and other benefits. Without a right to reside however there are no rights to social assistance. Different rules apply to A8 and A2 nationals. A8 nationals have been permitted to work in the UK since 2004 but must register (and pay a fee). Those that are not registered are not considered workers for the purposes of accessing social advantages. A2 nationals (Bulgarians and Romanians) are subject to a worker authorisation scheme and must seek permission to work. Fines are imposed for unauthorised work. Generally they do not have access to social advantages.<sup>231</sup>

All persons in the UK, including trafficked victims are entitled to medical care. Although it may be difficult to access if doctors are unwilling to register individuals without proper documentation. The ‘Enforcement Strategy’ explicitly supports this goal stating : *‘we want to make it harder for these people [‘illegal’ migrants] to gain access to services and benefit that they are not eligible for. We will step up our work with service providers and those who control access to benefits to enable them to check the entitlement of all migrants quickly and easily, so we can identify those that fall into the illegal category. Where the checks show non-entitlement they will inform IND and, in most circumstances, they will deny access to the*

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<sup>230</sup> The eligibility criteria for NASS assistance include that applicants can prove they have applied for asylum, that the application for asylum is made as soon as is ‘reasonably practicable’ after arrival in the UK or they are destitute and have no alternative means of support.

<sup>231</sup> ‘EU national victims of Human Trafficking, Sources of and Gaps in Protection’ draft paper prepared for OSCE/ODIHR by the AIRE centre.

*service.*<sup>232</sup> Although there is no entitlement for trafficked persons over 18 to access education, language classes are reported to be available on an ad hoc basis.

### **3. Institutional Responses to protect trafficked persons**

#### **3.1 OSCE recommendations**

The NRM and the OSCE Action Plan make numerous recommendations on institutional responses to trafficking. They recommend that cross sector/multi-disciplinary structures or working groups be created to develop, monitor and implement policies on trafficking. By multi-disciplinary and cross-sector is meant the inclusion of all government departments with a possible role in anti-trafficking such as those responsible for social services, health and safety, immigration, labour, wages and child protection alongside criminal justice actors. Civil society should also be included in these structures or groups.

The NRM and Action Plan also recommend that structures be headed by a National Coordinator on trafficking who should have overall responsibility for action on trafficking in the country. Further the appointment of a national rapporteur is recommended to act as a central point for data collection and reporting on trafficking in the country.

The tasks and responsibilities of all actors involved in a country's response to trafficking should be clearly described and attributed preferably in a national action plan which should also set benchmarks or 'performance indicators' and time frames for implementation and be supported by adequate resources and a 'self-monitoring' mechanism.

The institutional response should also be flexible to respond to previously unknown kinds of trafficking such as trafficking for labour exploitation. It should also reflect a 'human rights approach', recognising that trafficking is foremost an abuse of peoples' human rights and not only a national security or immigration crime problem. Measures to protect the people who are victims of trafficking and prevent future violations from occurring should be at the centre of a country's response.

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<sup>232</sup> Enforcing the Rules: A strategy to ensure and enforce compliance with our immigration laws, Home Office, March 2007 at p.17

### 3.2 The UK institutional response

The UK does not have a national coordinator or a national rapporteur on trafficking. There are however a number of different ‘multi-disciplinary’ groups or structures developing policy and practice on anti-trafficking in the UK. The Home Office has taken the lead in developing direct policy responses with the creation of the Inter-Departmental Ministerial Group on Human Trafficking (IDMG) and a Ministerial Non-Governmental Organisation Advisory group in 2005. The IDMG, chaired by the Home Office’s Parliamentary Under Secretary of State for Policing, Security and Community Safety brings together various government departments including the Foreign and Commonwealth Office, the Department for International Development, the Department for Work and Pensions, the Department for Education and Skills, the Department of Trade and Industry, the Department of Health, the Attorney General and the Solicitor General. The government, commenting on remarks in the draft report that the Immigration and Nationality Directorate were not included in the Ministerial Group, stated that although not represented in the group, the Immigration Minister has attended meetings in the past and all papers are cleared with Immigration Ministers prior to any meeting.<sup>233</sup> It is nevertheless notable that other government agencies, which would be recommended for inclusion in the development of trafficking policy are missing from the group, such as the Gangmasters Licensing Authority and HM Customs and Excise, responsible for enforcing the national minimum wage. It is not clear how often the IDMG meets but in its comments the government noted that the NGO group normally meets prior to the Ministerial Group so that issues raised by the NGO group can be included on the agenda of the Ministerial Group.

The key policy initiative of the Ministerial Group on Trafficking has been the development of a UK action plan, the consultation process for which was launched in January 2006 with responses to it published in July 2006.<sup>234</sup> The UK Action Plan was published in March 2007. It is divided into four chapters, under each of which are a number of ‘action points’. The chapters cover prevention, investigation law enforcement and prosecution, providing protection and assistance to adult victims and child trafficking. The purpose of the plan is to draw together all the work that is currently underway on human trafficking and set out what also is planned.<sup>235</sup> The plan includes some 62 activities to be undertaken by various ‘responsible parties’ in a given timeframe. There is no reference to financing. ‘Responsible parties’ include from Government the Home Office, Serious Organised Crime Agency

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<sup>233</sup> Written comments from Government.

<sup>234</sup> ‘Tackling Human Trafficking –Consultation on Proposals for a UK Action Plan’, Home Office, full text available at [http://www.ind.homeoffice.gov.uk/ind/en/home/news/press\\_releases/consultation\\_on\\_uk.Maincontent.0002.file.tmp/TacklingTrafficking.pdf](http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/consultation_on_uk.Maincontent.0002.file.tmp/TacklingTrafficking.pdf).

<sup>235</sup> UK Action Plan at 4.

(SOCA), the UK Human Trafficking Centre (UKHTC), Department for International Development (DfID), FCO, UK Visas, Crown Prosecution Service (CPS), Attorney Generals Office, the Department for the Environment (DEFRA), Department of Health, and the Department for Education and from civil society reference is made to ECPAT, NSPCC and the Poppy Project. Monitoring of the implementation of the plan is also foreseen and a number of assessment tools/indicators are included against which progress will be assessed. The IDMG are designated as the most suitable mechanism to monitor implementation of the plan. Progress reports on implementation of the Plan are to be provided to the Ministerial Non-Governmental Organisation Advisory Group.<sup>236</sup>

A second high-level working group created in 2002 also has implications for the development of policy on trafficking. The Illegal Working Stakeholder Group (IWSG) is chaired by the Home Office Minister of State for Citizenship, Immigration and Nationality and co-chaired by the Parliamentary Under Secretary of State for Employment Relations, Competition and Consumers in the Department for Trade and Industry. It comprises key stakeholders from the UK's commercial sector, trade unions and representatives of migrant workers and minority communities.<sup>237</sup> The IWSG looks at ways of tackling illegal migrant working and has proven itself a useful consultative forum for the government on illegal working and the impact of Government policy on employers and employees. Although none of the stated aims of the group refer to trafficking it does aim to 'send out a strong message to tackle illegal migrant working, exploitation and associated criminality.' Meetings have also considered questions relating to the protection of vulnerable and exploited workers which have implications for the protection of trafficked persons too.<sup>238</sup> The IWSG meets approximately three times a year and the minutes of its meetings are available publicly.<sup>239</sup> The UK Action Plan notes that the Home Office will continue to work closely with members of the IWSG stating that it plays an important role in disseminating key messages concerning the prevention of illegal migrant working to members of their own organisations in industry as well as providing information to migrant workers themselves on their rights and responsibilities.<sup>240</sup>

The Governments comments indicate that their recent immigration policy addresses the Agency's approach to trafficking and, rather than the IWSG, this is the '*suitable vehicle with*

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<sup>236</sup> UK Action Plan at 13

<sup>237</sup> The IWSG comprises representatives from: Association of Labour Providers (ALP), British Apparel and Textile Confederation (BATC), British Chambers of Commerce, the British Hospitality Association, Cleaning and Support Services Association, the Commission for Racial Equality, Commission for Social Care Inspection, the Confederation of British Industries, Construction Confederation, Department for Trade and Industry, Employability Forum, Health and Safety Executive, Immigration Advisory Service, Joint Council for the Welfare of Immigrants, National Car Parks, National Farmers Union, NHS Employers, Recruitment and Employment Confederation, Sainsburys, Scottish Trades Union Congress, Trades Union Congress.

<sup>238</sup> See example minutes of meeting at:

<http://www.ind.homeoffice.gov.uk/lawandpolicy/preventingillegalworking/tacklingillegalworking/minutes-03May2006?>

<sup>239</sup> [http://www.ind.homeoffice.gov.uk/ind/en/home/0/preventing\\_illegal/steering\\_group\\_to.html](http://www.ind.homeoffice.gov.uk/ind/en/home/0/preventing_illegal/steering_group_to.html)

<sup>240</sup> UK Action Plan at 33

*which to drive forward our institutional approach to trafficking.*<sup>241</sup> The ‘Enforcement Strategy’ describes the Home Office’s approach to ‘*ensure and enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of the UK to those here illegally.*’<sup>242</sup> Chapter 1 of the Strategy prioritises enforcement activity against illegal migrants ‘*who are causing the most harm in society ...or are involved in activities such as...human trafficking.*’ In terms of victims it states ‘*the illegal migrant may also be a victim of crime, such as in the case of trafficking for sexual exploitation.*’ Under the section entitled ‘trafficking for forced labour’ no mention is made of trafficking for labour exploitation although the following section entitled ‘Illegal working and employment’ notes that some of those working illegally may earn below the minimum wage and work in dangerous conditions. Such facts might in themselves be indicators of forced labour, but no reference is made to possible trafficking for labour exploitation. This is possibly indicative of a gap in the understanding on the part of the immigration authorities of what constitutes trafficking for labour exploitation which could usefully be addressed at a future review of policy.<sup>243</sup> This is particularly so in view of the fact that the Action Plan describes guidance being produced for workplace enforcement agencies on trafficking for forced labour and notes findings from a recent enforcement pilot indicating that ‘*businesses using illegal migrant labour are likely to be in breach of other workplace regulation.*’<sup>244</sup>

The strategy also references the UK Action Plan on Trafficking and the signing of the Council of Europe Convention to support the care of ‘*genuine victims of trafficking.*’ It states ‘*The Government will sign the Convention this year, and will work through the operational implications of implementation, in close co-operation with a range of stakeholders, in part to ensure that this does not become a source of abuse by people claiming to be victims of trafficking.*’<sup>245</sup> It is commendable that immigration policy in the UK now cross-references human trafficking, which had not been the case before.<sup>246</sup> The OSCE has long recommended that countries of destination prevent trafficking by developing appropriate immigration and labour policies.<sup>247</sup> It is also evident that there is a significant immigration contribution to the UK Action Plan which importantly notes that victims will be treated ‘*first and foremost as victims of crime rather than as immigration offenders.*’<sup>248</sup> Bearing in mind that not all

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<sup>241</sup> Written comments from government.

<sup>242</sup> Enforcing the Rules: A Strategy to ensure and enforce compliance with our immigration laws.’ Home Office, March 2007, at 5

<sup>243</sup> *Ibid* at 12.

<sup>244</sup> UK Action Plan at 42.

<sup>245</sup> *Ibid* at 23.

<sup>246</sup> The first draft of this report had indicated that immigration policy up to 2006 had made no mention of trafficking and exploitation and the need to protect victims.

<sup>247</sup> OSCE Action Plan Chapter IV, s.3.2 recommends that countries of destination prevent trafficking by addressing ‘the problem of unprotected, informal and often illegal labour, with a view to seeking a balance between the demand for inexpensive labour and the possibilities of regular migration’ and also consider ‘the liberalisation ...of their labour markets with a view to increasing employment opportunities for workers with a wide range of skills levels.’

<sup>248</sup> UK Action Plan p.7 and also see in particular p. 23 and 56-57 UK.

trafficking victims are subject to immigration control, and according to government comments the vast majority of victims in the UK are not ‘immigration offenders’, it will be important that the UK authorities will be careful not to discriminate in terms of access to reflection delay and initial assistance between victims that are subject to immigration control and those that are not.

In October 2006 the Association of Chief Police Officers (ACPO) led United Kingdom Human Trafficking Centre (UKHTC) was launched which aims to co-ordinate and direct the law enforcement response to trafficking bringing enforcement, intelligence gathering, training, victim care and research functions under one roof. In relation to the rationale for UKHTC the Action Plan States ‘ACPO argued that notwithstanding the progress which has been made by UK law enforcement, in particular under the umbrella of Reflex (and within that Operation Pentameter), it remained a reality that individual police forces have progressed at different rates. Set against this and the new capabilities of SOCA to focus on national and international criminality...there was now an opportunity to structure a central point for the development of law enforcement expertise and operational coordination at local and inter-force levels.’<sup>249</sup> ‘The centre is also expected to broaden the scope of UK investigations into trafficking for forced labour and child trafficking. It works in three priority areas including prevention, prosecution and enforcement and protection. To guide its activities, it has established five multi-agency groups including on Victim Care, Operational Intelligence, Learning and Development, Research and Education and Prevention.’<sup>250</sup> Its business plan specifically states ‘The UKHTC will pursue the continuing development of a more victim centred human rights based approach, rather than one which is immigration crime focused.’<sup>251</sup> In this manner it distinguishes itself from the previous focus of Reflex, a multi-agency ‘operational task force, created in 2000 and now subsumed by the Serious Organised Crime Agency programmes on organized immigration crime.’<sup>252</sup> To further develop the victim-centred approach to combating trafficking, a Victim Coordinator has been recruited and a sub-group, with NGO participation, established to address victims issues. The Action Plan states that the UKHTC’s victims sub-group and the Human Trafficking NGO Advisory Group ‘will play pivotal roles in reviewing current measures and setting the direction for future support for victims under the Convention.’<sup>253</sup>

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<sup>249</sup> See p.38 UK Action Plan.

<sup>250</sup> UKHTC Draft Business Plan, 2007-2008 at 16.

<sup>251</sup> UKHTC, Draft Business Plan, 2007-2008 at 7.

<sup>252</sup> See p. 35 of UK Action Plan for more details on SOCA’s programmes of activity which cover source countries, nexus points en route to the UK, exploitation of illegal migrants in the UK and trafficking in people, in particular women and children.

<sup>253</sup> UK Action Plan at p 48.

Those interviewed for the assessment were positive about the establishment of the IDMG and thought that it could potentially improve the co-ordination of anti-trafficking efforts, information flow and inter-agency co-operation. Concerns however were expressed as to how decisions taken by the group would be followed up in practice. In its written comments to the draft report, with respect to whether the UKHTC takes instructions from the IDMG, the UKHTC notes that the Home Office sits on its governance group and that its business plan is aligned closely with the objectives and actions set out in the Action Plan.<sup>254</sup> Some NGOs expressed concerns that the UKHTC was taking on roles, in particular with respect to victim care and assistance, that were best left to professional service providers. One police officer also indicated that his force would not be reliant on the expertise provided by the Centre where they had significant experience of their own on anti-trafficking.

With regards the NGO Advisory Stakeholder group, interviewees said it was crucial to include a variety of organisations from civil society with diverse mandates including those representing workers' rights organisations and migrants' rights organisations as well as services providers, human rights advocates and academics. The Government has commented that there is a core group who have interests that cut across the range of trafficking issues.<sup>255</sup> But membership is also flexible so that additional experts/NGOs can contribute depending on topics for the meeting. Examples of meetings focused on trafficking for forced labour or child trafficking which included extra participation were mentioned.

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<sup>254</sup> Written comments from Government

<sup>255</sup> The core group includes Chaste, ECPAT, IOM, Salvation Army, AFRUCA, Comic Relief, Unicef, CRE, Red Cross, London Met University, Refugee Council, Barnados, Anti-Slavery International, Save the Children, ILPA, Amnesty International, UKHTC, Kalayaan, De Paul Trust, Eaves Housing.



## **4. Operational Responses to Protect Trafficked Persons**

At the core of an NRM is the process of identifying presumed trafficked persons by different stakeholders and co-operation amongst stakeholders to ensure the victim's referral to specialised services.

The NRM recommends that the cooperation between law enforcement and civil society or service providers in the identification and referral of trafficked persons should preferably be set out in formal cooperation agreements between the parties defining the roles and responsibilities of the different actors. The use of such agreements in some countries has ensured that victims of trafficking have been given access to protection and assistance immediately and unconditionally and not sent to immigration detention centres or used purely as a source of intelligence for law enforcement investigations.<sup>256</sup> Experience has also shown that co-operation agreements between state and non-state actors raise the rate of successful prosecutions of traffickers; this being attributed to the victim's increased readiness to co-operate and testify because of conditions resulting from the agreement.<sup>257</sup>

Also authorities likely to come into contact with victims should be aware of the special circumstances trafficking victims face and show sensitivity in dealing with them and affording them access to existing protective mechanisms. Training and guidance for such officials to raise awareness of trafficking and ensure appropriate treatment of victims is therefore essential. There are also a variety of means that can be used to help encourage presumed trafficked persons to come forward to access their rights including hotlines, outreach work and drop-in centres which should be actively supported by States in the interests of protection.

This section therefore aims to review the cooperation agreements, training and outreach in place in the UK to contribute to the identification of victims.

### **4.1 Cooperation between agencies in identification and referral.**

#### ***4.1.1 Cooperation in the referral of victims of sexual exploitation***

##### ***4.1.1.1 The Poppy project***

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<sup>256</sup> See NRM Handbook at pp 16 -18 and 65-68 on cooperation agreements.

<sup>257</sup> See reference to German Federal Criminal Police, Trafficking in Human Beings 2002, cited in NRM Handbook , Pp.65.

The most notable cooperative arrangement for the identification and protection of victims of sexual exploitation in the UK is the Poppy project. It brought together the police (essentially CO14 Metropolitan Police, Clubs and Vice Unit),<sup>258</sup> immigration services and the NGO Eaves Housing for Women in a multi-agency working arrangement. The project's main purposes were (i) to identify women victims of trafficking for sexual exploitation; (ii) establish a scheme to provide support for women able to escape and (iii) to encourage trafficked women to give evidence against their traffickers.<sup>259</sup>

An evaluation of the project conducted in 2004/2005 provides a good overview of the issues that need to be addressed before cooperation will deliver protection to trafficked persons, as intended by the OSCE. It indicated that a cooperation agreement or 'operational protocol' was never entered into between the parties during the period under review. This meant that the different views as to the purpose of the project were never formalised and understood from the outset which ultimately undermined cooperation.<sup>260</sup> The different views arose from the fact that parties to the arrangement did not share the same understanding of the government strategy on trafficking, which made assistance provision to victims conditional on their collaboration with law enforcement.<sup>261</sup>

A memorandum of understanding is now in place between Poppy, ACPO, UKHTC and CPS which was published in October 2006 partly to support implementation of the Code of Practice for Victims of Crime, discussed above. The Action Plan notes that the MOU '*sets out each agencies responsibilities and boundaries in relation to the treatment of victims of trafficking and intelligence sharing.*'<sup>262</sup> The purpose of the MOU is stated as (i) to develop an inter-agency partnership approach to the protection and support of vulnerable persons who have been trafficked for the purposes of sexual exploitation; (ii) assist in the safeguarding and preservation of evidence in criminal and civil proceedings and contribute to the prosecution of traffickers; (iii) provide guidance as to what is acceptable, operationally and strategically, within the legal framework of the UK, in the provision of support, advice and counselling to victims of human trafficking.<sup>263</sup> With respect to identification of victims, the MoU indicates that UKHTC will develop training and protocols relating to the accurate identification of

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<sup>258</sup> CO14 is considered one of the most experienced police units dealing with trafficking for sexual exploitation in the London area. In the past it has conducted regular joint visits with the Immigration Services to premises frequented by sex industry workers in Central London.

<sup>259</sup> Evaluation of the Victims of Trafficking Pilot Project – Poppy, Pp10.

<sup>260</sup> Evaluation of the Victims of Trafficking Pilot Project – Poppy

<sup>261</sup> Of particular note the police had expected the scheme to lead to an increase in the number of successful prosecutions and convictions, as a result of providing victims with safe and supported accommodation yet these outcomes were still largely unrealised by the end of the extended period. The Immigration Services were also reported to have been disappointed by the project since although they acknowledged the victim status of trafficked women, they also viewed them as immigration offenders and as such falling within government targets to remove illegal immigrants. Many victims had in fact claimed asylum during the project and so were not subject to removal.

<sup>262</sup> See p.45 UK Action Plan

<sup>263</sup> 'Memorandum of Understanding between Eaves Housing (Poppy), ACPO, UKHTC and Crown Prosecution Service' at 2

trafficking victims. Poppy is obliged under the MoU to inform police of any female victim who has come into the programme and if a victim absconds from the project are to inform the police force that is leading the investigation.<sup>264</sup> With respect to assistance they will also assist in arranging return, where required, alongside providing legal immigration advice in addition to safe accommodation and other support. Whilst respecting the 28 day reflection period, reference is made to the need to secure evidence, including forensic evidence, as early as possible to assist with investigations. Poppy also agrees to provide ACPO and UKHTC with details of and access to victims and other persons believed to be involved in aspects of human trafficking.<sup>265</sup>

The police commit to notifying Poppy where possible in advance of operations which might impact on demand for bed spaces and will keep them informed about the welfare of victims rescued during operations. They will also make arrangements for evidence interviews and court appearances expecting that the Poppy caseworker will attend appointments, unless the victim prefers otherwise. The police and Poppy will also together identify special measures that the victim might need <sup>266</sup> The Crown Prosecution Service alongside ensuring introductions to the victim at court, will, where the victim is facing charges under immigration legislation, intervene with the Immigration service. It will also establish what Special measures might be needed to assist the witness in giving evidence in court.<sup>267</sup> There are also a number of provisions relating to the need to keep personal data of victims confidential. The final parts of the MoU relate to the provision of evidence and practices that might undermine the prosecution's case such as coaching or rehearsing a witness.<sup>268</sup>

Besides the key stakeholders involved with referral under the Poppy scheme, victims of trafficking for sexual exploitation are referred from many different quarters to the service provider. Statistics indicate referrals from NGO's, lawyers, clients, health services and local authorities alongside police and immigration services.<sup>269</sup> Concerns were expressed with regards insufficient referrals from certain actors. It was reported that some of the health service providers most likely to engage with trafficked women would not refer clients to Poppy or identify a person as having been trafficked when there was nothing of practical value that could assist that woman through referral. Health service providers pointed out that many factors discouraged their clients from reporting violence and coercion including (i) fear

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<sup>264</sup> *Ibid*, paras 18 and 19.

<sup>265</sup> *Ibid*, paras 24 -28.

<sup>266</sup> *Ibid* paras 30-39.

<sup>267</sup> *Ibid* paras 43-47.

<sup>268</sup> *Ibid* pp 7-8.

<sup>269</sup> Evaluation of the Victims of Trafficking Pilot Project – Poppy, Pp29: Most referrals in the period evaluated were from NGO's (39%) with 29% of referrals through police and only 7% by immigration services.

of arrest and prosecution; (ii) fear of Anti-Social Behaviour Order (ASBO); (iii) fear of deportation; (iv) fear that the offender would not be remanded in custody and would conduct revenge attacks; (v) previous experience of intrusive, irrelevant questioning by law enforcement; (vi) previous experience of unsuccessful prosecutions or early release of attackers.<sup>270</sup> There were also objections to the fact that service provision with Poppy was premised on cooperation with law enforcement and that long-term solutions, such as entitlements to remain and work in the UK, were not on offer. The service provider under the Poppy project also recognises that the insistence of cooperation with law enforcement forms the main barrier to referral to the service.

#### **4.1.1.2 Law enforcement**

The multi-agency initiative 'Reflex', now subsumed by SOCA and the multi-agency programmes of activity, was set up to develop and coordinate law enforcement operations against organised immigration crime, including trafficking bringing together a number of intelligence and law enforcement agencies, including the immigration services and 'key' police forces.<sup>271</sup> Reflex worked with a number of police forces in the regions to increase awareness of trafficking and build capacity to deal with it. Part of this was the development by police forces of victim's identification and referral in different areas.

Operation 'Pentameter', the first co-ordinated law enforcement operation to tackle trafficking for sexual exploitation on a national scale, conducted between February to June 2006, and funded by Reflex, was presented as a 'multi-agency victim-focused' initiative. It is notable that non-governmental organisations were involved in the design and conduct of Pentameter which led to operations against 515 massage parlours and the recovery of 84 presumed victims of trafficking.<sup>272</sup> The UKHTC Business Plan states that '*Operationally, much of law enforcements experience in dealing with trafficking has relied upon victims escaping and reporting to the police. Successful reactive investigations have taken place but there have been limited proactive operations. Operation Pentameter changed this landscape.*'<sup>273</sup>

The 55 police forces involved in Operation Pentameter were encouraged to make their own ad-hoc arrangements with local service providers, both governmental and non-governmental, for the protection of victims identified in raids and reference was made above to the

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<sup>270</sup> *Response to Paying the Price*, UK network of Sex Work Projects (formerly EUROPAP) SVP Working Group, 2004, Pp 49.

<sup>271</sup> Partner agencies in Reflex include the Serious Organised Crime Agency, the Immigration and Nationality Directorate Intelligence Service, UK Passport Service, Association of Chief Police Officers (ACPO), the Security and Intelligence Agencies, the Gangmasters Licensing Authority, the Home Office, the Foreign and Commonwealth Office, the Crown Prosecution Service.

<sup>272</sup> Information accessed at: [www.pentameter.police.uk](http://www.pentameter.police.uk)

<sup>273</sup> UKHTC Draft Business Plan, 2007-2008 at 10

arrangements that certain forces came to.<sup>274</sup> It is not clear however if such arrangements were ever supported by cooperation agreements or protocols formalising views on the purpose of the cooperation or outlining mandates and responsibilities between law enforcement and service providers. In some cases it was reported that service providers were frustrated because presumed trafficked persons were not being given access to support services. It was considered that the police and immigration services were sometimes making determinations about a trafficked person's status over a very short period of time and in an inappropriate environment.<sup>275</sup> Certain police officers queried why immigration services needed to be involved in such operations at all since they put the police (and the victims) under pressure to secure information quickly when a presumed trafficked victim was in breach of immigration control. Others made more positive remarks commenting that the cooperation with immigration services had been good. Immigration services had given the police the space and time to conduct their interviews with victims and generally their expertise in immigration matters had contributed to the operations.<sup>276</sup>

The Action Plan notes that currently victims are identified and referred onto support services through various avenues. The most common procedure it notes is that '*a potential victim is identified (often by the police through an enforcement operation or by a voluntary organisation) and then referred either directly to the Poppy project through the UKHTC to other service providers*'.<sup>277</sup> It goes on to acknowledge that more formalised identification procedures are needed and that the model that would be adopted would include three main components : early identification guidance and protocols for front-line staff, one-point of contact for referrals and formal identification procedures for referral onto support services. No reference is made to cooperation agreements with service providers.<sup>278</sup>

#### ***4.1.2 Referral of victims of labour exploitation***

There is no equivalent cooperative arrangement like the 'Poppy project' for victims of labour exploitation in the UK, although a number of non-governmental actors have been active in providing services to victims of labour exploitation. There have been however reports of government agencies encountering situations of trafficking for forced labour but not acting, since protection of such persons is not 'within their responsibility'.<sup>279</sup> The Action Plan notes that as the government moves towards implementation of the Convention it will need to

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<sup>274</sup> See 'Assistance', chapter 2.

<sup>275</sup> See 'Operation Pentameter' on [www.pentameter.police.uk](http://www.pentameter.police.uk) and conference notes from Pentameter 'de-briefing' conference, on file with authors.

<sup>276</sup> *Ibid.*

<sup>277</sup> UK Action Plan at 50

<sup>278</sup> *Ibid.*

<sup>279</sup> *Trafficking for Forced Labour- UK Country Report*, Anti-Slavery International, 2006

develop knowledge of the type of services that might be required to support victims of labour trafficking, and will be looking to European colleagues to assess what can be learnt from their experiences. In the interim it will start piloting services to assess what is needed.<sup>280</sup> With respect to MoU's relevant to labour trafficking enforcement action, the Action Plan states that an MoU between ACPO and the Gangmasters Licensing Authority will support the sharing of information between the UKHTC and police forces with GLA and vice versa.<sup>281</sup> No reference is made though to other kinds of cooperation agreements for service provision or to support the Victim code of conduct as for victims of sexual exploitation. This is something that will hopefully be addressed in the future.

## **4.2 Methods of identification, guidance materials and training**

The OSCE has adopted numerous commitments and recommendations to facilitate the identification and self-identification of trafficked persons. Most recently it promotes the use of 'outreach work' by for instance NGOs, trade unions or local authorities. Outreach work should target communities that are at risk of or likely to be exploited or trafficked and aim to raise awareness of rights to enable people to withdraw from the environment in which they are forced to work and seek remedies. A recent OSCE Ministerial decision encourages States to promote outreach strategies *'to provide information on trafficking in human beings for labour exploitation to migrant communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic workers, in order to improve victims' access to assistance and justice...'*<sup>282</sup> The OSCE Action Plan and NRM Handbook further recommend the support of 'hotlines' and 'drop-in' centres for the provision of essential information on entitlements and assistance and, where appropriate, to facilitate the anonymous reporting of cases.

There are a number of good practices in the UK which support these approaches to providing services to trafficked and vulnerable persons:

### **4.2.1 Outreach and drop-in centres**

The Action Plan notes that the Poppy Project has recently been extended to include an outreach team working with frontline statutory agencies and the voluntary sector to help with the identification and treatment of victims.<sup>283</sup>

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<sup>280</sup> UK Action Plan at 54.

<sup>281</sup> UK Action Plan at 41

<sup>282</sup> MC.DEC/14/06 on 'Enhancing efforts to combat trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive And Proactive Approach, s.6 (e).

<sup>283</sup> UK Action Plan at 49.

The Network of Sex-Work Projects (NSWP) is an informal alliance of sex workers and organizations that provide services to sex workers amongst which are trafficked persons. In the UK, the network consists of more than 70 projects and organisations throughout the country, providing services and promoting sexual health. Projects working with migrant sex workers use a number of strategies to address their needs including multi-lingual information leaflets and the availability of interpreters at health clinics (e.g. CLASH clinic, SHOC and Praed Street)<sup>284</sup>.

There are also a number of service providers providing support and information to migrants, amongst which may be trafficked and exploited persons including the Citizens Advice Bureaux, Kalayaan and the Ethical Trading Initiative. The Trades Union Congress (TUC) [together with the Citizen's Advice Bureaux] also recently conducted a rights awareness campaign, providing information leaflets on employment rights for A8 nationals. This was reported as particularly beneficial by migrants and should be extended to other nationals.<sup>285</sup> The Action Plan also references a number of activities to raise awareness about workers rights to help victims avoid the deception of traffickers or to help in the reporting of crime.<sup>286</sup> It is not clear whether these initiatives are also tied to giving information about entitlements to protection and redress.

The Citizens Advice Bureaux provide services in nearly 3,400 locations in England, Wales and Northern Ireland. The organisation provides legal, financial and other relevant information free of charge to both UK nationals and migrants. Recently the organisation has documented a wide range of abuses of migrant workers in several UK industries including the care sector, cleaning and hospitality, agriculture and food processing.<sup>287</sup> Based on their experiences, the organisation advocates for a modern, pro-active system of enforcing basic standards at work.<sup>288</sup>

Kalayaan,<sup>289</sup> provides advice, advocacy and support services in the UK for migrant domestic workers. The organisation provides advice on immigration and employment, support in retrieving passports from employers, training in accessing healthcare and mainstream services, English language courses, practical emergency assistance to clients who have

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<sup>284</sup> Response to Paying the Price, UK network of Sex Work Projects

<sup>285</sup> *Fair enough? Central and East European migrants in low-wage employment in the UK*, COMPAS, May 2006, Pp.100 commenting on the Worker Registration Scheme.

<sup>286</sup> UK Action Plan at 28

<sup>287</sup> *Nowhere to Turn: CAB evidence on the exploitation of migrant workers*, Citizens Advice Bureaux, 2004, accessed at: [www.citizensadvice.org.uk/nowhere-to-turn](http://www.citizensadvice.org.uk/nowhere-to-turn)

<sup>288</sup> More information and the reports of the organisation are available at: <http://www.citizensadvice.org.uk/index/aboutus.htm>

<sup>289</sup> Kalayaan is a registered charity established in 1987. Information about the organisation, services and activities is accessible at: <http://www.kalayaan.org.uk/>

recently left abusive employers and referral services. Besides providing direct services, the organisation also campaigns for the rights of migrant domestic workers as workers in the UK.<sup>290</sup>

#### **4.2.2 Law enforcement operations**

There are mixed experiences in the OSCE region with regards the success of law enforcement in protecting and assisting trafficked victims. Research in South-Eastern Europe indicated that only a third of presumed trafficked women were identified by law enforcement and that the majority were not referred to support programmes for assistance but were sent to immigration detention centres for subsequent deportation, which in some cases resulted in re-trafficking.<sup>291</sup> In certain cases operations to ‘rescue’ trafficked victims have ended in their prosecution for immigration-related offences or unlawful activity.

The Birmingham raid highlighted earlier in this review provides an example of how law enforcement action may not result in the provision of support and assistance to trafficking victims but instead leads to the rapid removal of persons, without consideration given to rights to access justice and remedies or risks of ill treatment and re-trafficking on return. During this assessment numerous reports were received of premises raided by police and undocumented women taken directly to the police station and deported, without being able to take even belongings or change clothes.<sup>292</sup> Law enforcement explained that a lack of time and trained staff often resulted in a failure to identify trafficked persons.<sup>293</sup>

The government has commented that policy and practice has moved on considerably since then and Pentameter has further developed the law enforcement response.<sup>294</sup> With respect to comments in the draft report quoting earlier research that had found that “*deportation is a particularly common outcome when the police and immigration officials cooperate in brothel raids*”,<sup>295</sup> the government commented that under Pentameter there were no deportations. ‘*The UKHTC’s role is to co-ordinate between organisations to ensure that no victims are removed under immigration powers. The UKHTC and Pentameter before it has undertaken a large amount of work to raise awareness amongst law enforcement, including producing leaflets*

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<sup>290</sup> *Migrant Worker’s Rights: The Passport Issue*, (a report examining the withholding of migrant domestic workers’ passports by employers: its impact and prevention), Kalayaan, 2003

<sup>291</sup> See ‘Trafficking in Human Beings in Southeastern Europe: Current Situation and Responses to Trafficking’ ODIHR/UNICEF/UNOHCHR, 2002

<sup>292</sup> Response to Paying the Price, UK network of Sex Work Projects

<sup>293</sup> Interviews, 3 different police units mentioned this need

<sup>294</sup> Written comments from Government

<sup>295</sup> *The Struggle Between Migration Control and Victim Protection: The UK Approach to Human Trafficking*, Women’s Commission for Refugee Women and Children, 2005, accessed at [www.womenscommission.org](http://www.womenscommission.org)



*advising police on what and what not to do.*<sup>296</sup> Nevertheless as noted above, there was not always agreement under Pentameter with regards who was identified as a victim and the time and conditions under which determinations had to be made.<sup>297</sup>

Comments to the UK consultation on an action plan also noted that random raids of the flats of prostitutes was not helpful as it was unlikely that people would disclose information as a result and that to support enforcement, the police should have their awareness increased as to the impact of their interactions with prostitutes.<sup>298</sup>

Police raids were cited as the most important means, for those police units interviewed, for identifying trafficked victims. Police raids normally take place once sufficient police intelligence is collected or if the police receive a tip-off or are requested to help a specific person.<sup>299</sup> An exception to this rule has been the series of planned law enforcement operations conducted under the Pentameter operation which, as noted above, led to visits to 515 massage parlours. In terms of protection, the Pentameter operation was reported to have led to the ‘rescue’ of 84 presumed victims of trafficking. Although the government is clear in its comments that no Pentameter victims were either deported or prosecuted for immigration offences, no information was provided with regards the others, who were not seen to be victims.

It is clear that law enforcement action can contribute to the protection of trafficked persons when it is intended for this purpose, rather than for immigration control, and where mechanisms are in place that allow for a ‘presumed victim’ to access services which are of value to him or her during a period of reflection or temporary residency, if necessary. In the absence of such conditions however raids might result in further abuses of trafficked persons’ human rights and such outcomes should be given serious consideration in the planning of future operations. The UKHTC has commented that it will have a role in engendering such attitudes.<sup>300</sup>

#### ***4.2.3 Guidance materials and training to identify trafficking victims***

Training materials for police indicate that *‘few human trafficking investigations have started as a result of intelligence led investigations; typically they have started when a victim has*

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<sup>296</sup> Written comments from Government

<sup>297</sup> See section 4.1.1.2 ‘Law enforcement’ above.

<sup>298</sup> Tackling Human Trafficking – Summary of Responses to the Consultation on Proposals for a UK Action Plan, Pp 35.

<sup>299</sup> Composite, interviews with four different law enforcement agencies

<sup>300</sup> Written comments from Government

*been rescued by a member of the public or made herself known to a police patrol or gone to a police station.*<sup>301</sup> Therefore guidance materials and training for law enforcement are essential to raise awareness of trafficking, when cases present themselves, and provide guidance on the identification and appropriate treatment of trafficked persons, including their entitlements to protection and assistance.

The Home Office's Crime reduction toolkit was developed in 2002 to raise awareness amongst agencies responsible for tackling trafficking and *'to help those who deal with illegal immigrants and trafficking victims to distinguish victims in genuine need and to deal with them appropriately.'*<sup>302</sup> It provides information to enable practitioners to distinguish between trafficking from migration and smuggling, understand the mechanisms of coercion and deception employed by traffickers as well as the different forms of exploitation for which people are trafficked. The toolkit also sets out the roles and responsibilities of law enforcement, immigration service, social services, prosecutors (Crown Prosecution Service) and NGOs, suggesting multi-agency co-operation and referrals as discussed in the previous section. The needs of victims are highlighted and suggestions for interviewing them and providing safety and protection during court proceedings offered. The toolkit is now being updated by the UKHTC to ensure that it includes *'victim profiles, clear identification indicators, advice on engaging with victims, and referral protocols for a wide range of agencies.'*<sup>303</sup>

Training materials have also been produced for 'First Responders' describing trafficking and the appropriate treatment of victims in the course of gathering information for an investigation. The immigration services also have their own materials. Chapter 9 under their 'Enforcement Instructions and Guidance', which contains guidance for officers dealing with enforcement immigration matters, is devoted to identifying victims of trafficking. The introduction states that *'this guidance should be followed during all operations where individuals who may be victims of trafficking for sexual exploitation are encountered so that potential victims are handled in a consistent and sensitive manner.'*<sup>304</sup> The guidance includes a broad range of useful indicators to assist in identifying victims that reflect the ILO's forced labour indicators.<sup>305</sup> It further notes that *'some individuals who have experienced exploitation at the hands of traffickers will need time to recover and reflect on their position. Therefore if Officers encounter a potential victim of trafficking they should contact UKHTC who will be able to advise on making a referral to either a support service or directly to the Poppy*

<sup>301</sup> See First Responders Module, Centrex, Pp 6.

<sup>302</sup> Crime Reduction Toolkits: Trafficking of People.

<sup>303</sup> UK Action Plan at p.49 and action point 23

<sup>304</sup> Enforcement Instructions and Guidance, chapter 9, accessed at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>.

<sup>305</sup> Ibid at section 9.4.

*Project...*<sup>306</sup> With respect to holding removal in abeyance, the only reference made in the guidance is to those women accepted under the Poppy scheme.<sup>307</sup> There is no equivalent guidance on identifying trafficked victims of labour exploitation. There is also guidance for asylum case-workers in relation to dealing with trafficking victims being ‘fast tracked’ in the asylum process, which was discussed above.<sup>308</sup>

Generally these materials are good and adequately describe trafficking. For the time being however, presumably until entry into force of the Convention, they do not explicitly instruct to unconditionally protect and assist all victims of trafficking, including those subject to immigration control and those trafficked for labour exploitation. Instead guidance on the protection of victims is limited to those cases where the person qualifies for referral to the Poppy project, is prepared to cooperate in criminal proceedings, ( in which case reference is made to the Home Office circular with respect to deferral of removal for witnesses), or is not subject to immigration control.<sup>309</sup>

It is hoped that with the adoption of the Convention and legal provisions to protect all trafficking victims, the guidance material will be updated to reflect entitlements to unconditional assistance and reflection periods for all.

### **4.3 The identification process**

Identification is a process which should take time and which should be embedded in a system of protection and assistance. Law enforcement in many countries has developed lists of indicators or ‘profiles’ to assist in the identification of both victims and perpetrators of trafficking.<sup>310</sup> These indicators often focus on both the manner in which the victim arrived in the country and the exploitation to which that person is subject. Since the ‘harm’ to a victim of trafficking essentially arises through the sexual or labour exploitation to which that person is subjected, the OSCE/ODIHR recommends that key indicators for law enforcement focus on component elements of the exploitation. The ILO’s proposed indicators of forced labour are considered a good starting point for developing indicator checklists for law enforcement and are useful in determining situations of either labour or sexual exploitation.<sup>311</sup> They include: (i) threats or actual physical harm to the person; (ii) restriction of movement and confinement

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<sup>306</sup> *Ibid* section 9.7 ‘Making referrals’.

<sup>307</sup> *Ibid* section 9.8, ‘The Poppy project’.

<sup>308</sup> See section 2.2.3.1 ‘Asylum and humanitarian protection.’

<sup>309</sup> See Enforcement Instructions and Guidance, chapter 9 and ‘Human Trafficking for Sexual Exploitation: Working with the Victim, First Responders Module at 46 both with references to Home Office Circular 2/2006 to support foreign witnesses.

<sup>310</sup> See for example NRM Handbook at 63 referencing practice in Hamburg, Germany.

<sup>311</sup> *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislators and Law Enforcement*, International Labour Office, Geneva, 2004.

to the 'workplace' or to a limited area; (iii) debt bondage, where the person works to pay off a disproportionate debt or loan and is not paid for his or her services; (iv) withholding of wages or excessive wage reductions that violate previously made agreements; (v) retention of passports and identity documents so that the person cannot leave or prove his/her identity and status; (vi) threat of denunciation to the authorities where the person has an irregular immigration status.

As already noted above, the guidance for immigration officers provides a wide-ranging list of indicators in the identification of victims of trafficking for sexual exploitation.<sup>312</sup> The Action Plan also states that the Home Office has been working alongside others to produce guidance on key indicators of workplace abuse, including the use of illegal migrant labour and trafficking for forced labour. The guidance aims to provide workplace inspectors with a set of readily observable characteristics which may indicate workplace abuse.<sup>313</sup> Also updates to the best practice toolkit will include identification indicators.<sup>314</sup>

#### **4.3.1 Identifying victims of sexual exploitation**

During the collection of material for this assessment it was evident that the experience, capacity and methods used to identify and protect trafficked persons varied considerably across police forces. The Action Plan implicitly recognises this where it notes that part of the rationale for establishing the UKHTC was to ensure more consistency across police forces in their handling of trafficking.<sup>315</sup> Assessing the practice of identification of trafficked persons by police on a scale wider than an individual police unit was therefore difficult.

The most widely used method for identifying trafficked persons by law enforcement was reported to be the police/immigration interview, following a police raid. The interview normally takes up to three hours and during this time it is established whether or not the person is a trafficking victim. At the time of interviewing there were no standard identification criteria used by law enforcement to identify a trafficking case or victim, as in other countries, although the Pentameter Operation provided police officers with '*profiles of what a trafficking victim might look like*'.<sup>316</sup> These were not available for review for this

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<sup>312</sup> Enforcement instructions, supra note 306 section 9.4.

<sup>313</sup> UK Action Plan at 42.

<sup>314</sup> UK Action Plan at 49.

<sup>315</sup> UK Action Plan at 38. 'ACPO argued that notwithstanding the progress which has been made by UK law enforcement, in particular under the umbrella of Reflex (and Operation Pentameter), it remained a reality that individual police forces have progressed at different rates....there was now an opportunity to structure a central point for the development of law enforcement expertise and operational co-ordination.'

<sup>316</sup> Human trafficking ,Joint Committee on Human Rights Pp 48.

report from UKHTC. Training modules that had also been developed and addressed identification were also confidential and could not be shared.<sup>317</sup>

Interviewees otherwise explained that they use criteria in line with the national anti-trafficking legislation and Palermo Protocol, although as already discussed above there are differences between UK law and what constitutes an offence of trafficking in the UK and the Palermo definition. At the same time, it was stressed that ‘each case is individual and the most pressing need is to rescue the genuine victims’.<sup>318</sup> For all police representatives interviewed, a genuine victim is a female forced into prostitution by use of violence (more than once the officers equalled it to ‘serial rape’). She should also be someone who did not intend to work illegally or in prostitution in the UK. Therefore if she had consented to cross borders illegally or had knowledge that she would be engaged in prostitution, she risked not being ‘identified’ as trafficked by law enforcement. The government commented that the ACPO lead on organised immigration crime, who is also programme director of UKHTC would not agree with this assessment.<sup>319</sup> Neither would case-law, already referred to earlier, where cases involving non-coerced women in prostitution were charged as trafficking. (See for instance the case of *R v Roci* who had consented to work in prostitution in the UK.)

In cases of police ‘visiting’ premises, more informal interviews may be held during which a woman might reveal if she is mistreated. If there is reason for the police to believe that that person might be in danger, even if she does not state so, the premises would be visited further to assess whether she needs help. In general, the interviewed law enforcement agencies reported that they use a number of other methods to reach trafficked women also. Examples included using plain clothes officers specially briefed for identification, intelligence gathered from the Internet and collaboration with streetwork NGOs. The UK Action Plan also notes the outreach work of the Poppy project to assist statutory agencies in the identification of victims.

Where a person presents herself at the police station for an interview, much then depends on the individual interviewing officer. There were reports and examples of both excellent treatment of victims and unsatisfactory ones resulting in non-identification or mistreatment.<sup>320</sup> No standardised criteria is provided in police training material for first responders to assist in identifying a trafficking case or victim either which could be helpful, although it quite rightly

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<sup>317</sup> Written comments from the Government.

<sup>318</sup> Interview, law enforcement.

<sup>319</sup> Written comments from Government.

<sup>320</sup> Interview, lawyer.

emphasises that there is no one standard or ‘classic’ person trafficked for sexual exploitation.<sup>321</sup>

### **4.3.2 Identifying victims of labour exploitation**

As already noted above, there are currently no mechanisms in place to identify and assist trafficked victims of labour exploitation. The Parliamentary Under-Secretary for the Home Office, Vernon Coaker, explained in 2006 that ‘there is currently no facility available to record whether those encountered (during illegal working operations, i.e. immigration raids) have been trafficked for the purpose of labour exploitation.’<sup>322</sup> Between 2002-2005, 4,312 illegal working operations were conducted, resulting in the apprehension of 12,630 immigration offenders. An independent audit of 164 labour providers supplying workers in the secondary processing sector, an area prone to illegal working, identified 13 cases of forced labour of migrant workers.<sup>323</sup> Similarly, reports of the Citizen Advice Bureaux detail the exploitative living and working conditions of many migrants working in care homes, cleaning, hotels and restaurants alongside agriculture and food processing.<sup>324</sup>

The UK Action Plan notes that more will be done to assist these victims as moves are made to implement the Convention. It also comments with respect to identifying victims of trafficking for labour exploitation that one of the difficulties that will be faced in combating trafficking for forced labour is distinguishing ‘between poor working conditions and situations involving forced labour. The element of coercion is an important indicator of forced labour.’<sup>325</sup> The government has commented that evidence suggests that it is workers from the states who recently became members of the EU who are subject to exploitative labour practices.<sup>326</sup>

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<sup>321</sup> See First Responders Module, Centrex, Pp 11.

<sup>322</sup> *People Trafficking*, Home Department, Written answers, 2006, accessed at:<http://www.theyworkforyou.com/wrans/?id=2006-06-20a.74856.h>

<sup>323</sup> *Exclusion Consultation- Abuses found in secondary processing*, Revised version, Ethical Trading Initiative, 2005

<sup>324</sup> Nowhere to turn - CAB evidence on the exploitation of migrant workers.

<sup>325</sup> UK Action Plan at 40.

<sup>326</sup> Written comments from government

## Conclusions and Recommendations

Since the start of this assessment in October 2005 the UK has made considerable headway on anti-trafficking. The UK government comments to the draft report in May 2007 stated that *‘two years in another, less fast moving area of policy might not be a long period but it is in respect of trafficking policy and practice given that this is a new area that is under rapid development.’*<sup>327</sup> Of particular note has been its commitment to implement the Council of Europe Convention and provide unconditional assistance and temporary reflection periods to all victims of trafficking, alongside introducing residence permits in certain cases. This will necessitate the development of appropriate services for victims of labour trafficking, alongside the development of a wider network of service provision for victims of sexual exploitation. The highly regarded model developed with Poppy could provide an example for other cooperative arrangements in other regions. Also the memorandum of understanding developed with Poppy, law enforcement and CPS should be something considered for duplication in other regions to enhance the protection of victims’ rights.

The creation of the UKHTC in October 2006, with an ambitious plan to become the centre of expertise on law enforcement action against trafficking, as well as playing a role in developing victim assistance and ensuring a human rights approach to trafficking, is also noteworthy. The extent to which its guidance and training for law enforcement on trafficking will improve the identification and assistance of victims should be easily evaluated, resulting in an increase of victims assisted, and prosecutions of traffickers. It will be interesting to analyse changes in such data since its creation. It is also a welcome development that the UKHTC approach has broken from the past, where trafficking was tackled through organised immigration crime. Since this only represents a part of the problem, it is right that responses to trafficking remain sensitive to its changing nature.

Issues around the identification and referral of trafficking victims have been most affected during the course of this research, as a result of increased law enforcement operations against trafficking and with the impending implementation of the Council of Europe Convention and its entitlements. Although it appears that service providers, notably Poppy, have assisted in the identification of trafficked victims in the past, the need to now create, what has been called ‘a more formalised mechanism’ may mean that the traditional expertise advising on who are victims of trafficking for sexual exploitation might be sidelined. The guidance

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<sup>327</sup> Written comments from UK Government, May 2007

developed for prosecutors to discontinue cases against victims of trafficking indicates that only officials, largely investigating officers, will have authority to say whether someone is a victim or not. The opinion of an experienced service provider will contribute to the determination but will not count for much. This seems to represent a step backwards. At the heart of an NRM is the cooperation between law enforcement and service providers in the identification of victims. The UK authorities should reevaluate their relationship with civil society service providers and develop more trust in the contribution that reputable organisations can make in identifying and assisting victims. The UK authorities will also have to guard against discrimination in according victim status by ensuring that different criteria will not be applied in determining whether or not someone is a victim. Access to unconditional assistance for four weeks should be available to all victims, regardless of their immigration status. To ensure this, large-scale training programmes promoting a consistent set of criteria in the identification of victims and developing specific skills in the handling of such cases will be needed for all officials with authority to decide this question

At the same time more needs to be done to raise awareness of the issue of labour trafficking amongst law enforcement and prosecutorial authorities. The existence of cases which were not investigated in the UK may point to a lack of awareness of the relevant legislation. Similarly guidance on the identification of victims, or the treatment of asylum seekers, must now go further than guidance only on victims of trafficking for sexual exploitation. Equally Gangmasters Licensing Authority information leaflets for migrant workers should include information about entitlements of trafficked persons and rights to compensation.

To improve compensation payments for all victims of trafficking, efforts must be made to raise awareness of its importance amongst the judiciary and prosecutorial authorities. It is commendable that the UK has now compensated a trafficking victim through CICA. Legal assistance to support victims in compensation claims also needs to be provided and guarantees given that during any legal proceedings for compensation, or unpaid wages, removal proceedings will be held in abeyance.

It appears that many victims of trafficking possibly use the asylum/humanitarian protection route to secure longer protection in the UK in the absence of any other residency regime. In particular victims that have cooperated in criminal proceedings and do not wish to return home should be given the opportunity of seeking a residency permit, like in other EU countries. This would avoid the need for rather long and sometimes traumatising asylum proceedings for victims.



Country reports, used to help decision making in asylum applications should also reflect information on the risks of re-trafficking for returned victims and the implications of requiring the relocation of a victim on his or her future rehabilitation. Credibility also remains an important issue in asylum claims and is predicated on early disclosure of facts. Late disclosure may still be held against trafficking victims which is unfair and incompatible with the notion of a reflection delay for victims. Also there is no basis for the Home Office to distinguish in its assessment of credibility between claims brought by Poppy and others, particularly in view of the limited acceptance criteria of the Poppy project. Therefore efforts should be made to ensure that assessments are based on clear criteria with respect for the need for a reflection delay, even in asylum proceedings.

There are still concerns that trafficking victims may be detained. Instructions should be clear on this point that detention is never appropriate for a trafficking victim. Also procedures need to be adopted to ensure that officers can screen out trafficking cases before fast-tracking them, and that if cases slip through, mechanisms are in place to ensure that such persons can be withdrawn.

Proactive law enforcement operations have also stepped up and despite concerns that these can lead to the deportation and mistreatment of trafficking victims when handled improperly, the UK claims to have achieved positive results. Care will though still need to be taken to ensure that officers are correctly trained and skilled in dealing with victims of trafficking, as well as correctly understanding how the UK law defines victims, and ensuring their access to support and protection when there is reason to believe they are trafficked.

Finally there is much good practitioners' guidance in the UK. However future revisions will need to ensure that entitlements to protection and assistance are open to all trafficking victims, and not just a limited category.

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