

# VICTIMS OF TRAFFICKING

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# IDENTIFICATION OF VICTIMS

- NRM statistics: 108 nationalities
- Albanian, UK, Vietnamese, Nigerian, Romanian
- Prostitution
- Cannabis farming
- Theft
- Labour
- False documents
- Legitimate employment
- [http://www.unodc.org/documents/human-trafficking/TIP\\_module2\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/TIP_module2_Ebook.pdf)

# LEGAL FRAMEWORK

- UN Convention against Transnational Organised Crime, Annex II – The Palermo Protocol (Ratified 9 February 2006)
- Council of Europe Convention on Action against Trafficking in Human Beings – the Anti-Trafficking Convention (in force 1 April 2009)
- EU Directive 2011/ 36/ EU (direct effect from 6 April 2013)
- S45 Modern Slavery Act 2015

# DEFINITION OF TRAFFICKING

## Article 3: Palermo Protocol

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

(Adopted by Article 4 of the Anti-Trafficking Convention)

# PRINCIPLE OF NON-PROSECUTION

## Anti-Trafficking Convention

- Article 26: Non- punishment provision

“Each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been *compelled* to do so”

# EU Directive

## Article 8

### Non-prosecution or non-application of penalties to the victim

“Member states shall, in accordance with basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been *compelled* to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.”

# NATIONAL REFERRAL MECHANISM

## 3 stage process

- Referral by first responder (police/ CPS) to competent authority (UKBA/ UKHTC) through NRM

No consent required if potential victim is under 18. Consent required for adults.

- “Reasonable grounds” decision  
45 day reflection period
- Conclusive decision – balance of probabilities

# CPS AND THE PRINCIPLE OF NON-PROSECUTION

## Prosecution and Policy Guidance Note

3 stage process:

- Is there a reason to believe that the person is a victim of trafficking?
- Is there clear evidence of a credible common law defence of duress?
- If the offence may have been committed as a result of compulsion arising from the person's trafficked situation is it in the public interest to proceed?



# ABUSE OF PROCESS – AVAILABLE REMEDY?

- *R v Joseph and others [2017] EWCA Crim 36*
- EU obligation is to avoid prosecution of trafficked victims
- Modern Slavery Act 2015 does not expressly refer to the non-prosecution principle
- Application for stay should be advanced in accordance with *R v L and others [2013] EWCA Crim 991*

# R V L AND OTHERS

*R v L and others [2013] EWCA Crim 991*

*“The criminality, or putting it another way, the culpability of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age...but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals” (para 13)*

# THE TEST

*“In some cases the facts will indeed show that he was under such levels of compulsion which mean that in reality culpability was extinguished. If so, when such cases are prosecuted, an abuse of process submission is likely to succeed.... In other cases, more likely in the case of a defendant who is no longer a child, culpability may be diminished but nevertheless be significant. For these individuals prosecution may well be appropriate with due allowance to be made in the sentencing decision for their diminished culpability” (para 33)*

# S45 DEFENCE UNDER MODERN SLAVERY ACT

- (1) A person is not guilty of an offence if –
  - (a) The person is aged 18 or over when the person does an act which constitutes the offence,
  - (b) The person does that act because the person is compelled to do it;
  - (c) The compulsion is attributable to slavery or to relevant exploitation, and
  - (d) A reasonable person in the same situation as the person and having the person’s relevant characteristics would have no reasonable alternative to doing the act.
- (2) A person may be compelled to do something by another person or by the person’s circumstances.
- (3) Compulsion is attributable to slavery or relevant exploitation only if –
  - (a) It is, or is part of, conduct which constitutes an offence under section 1 or conduct which constitutes relevant exploitation, or
  - (b) It is a direct consequence of a person being, or having been, a victim of slavery or a victim of relevant exploitation.
- (4) A person is not guilty of an offence if –
  - (a) The person is under the age of 18 when the person does the act which constitutes the offence
  - (b) The person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
  - (c) A reasonable person in the same situation as the person and having the person’s relevant characteristics would do the act
- (5) For the purposes of this section –  
“relevant characteristics” means age, sex and any physical or mental illness or disability

# STATUTORY DEFENCE

- Does not apply to offences listed in Schedule 4 (murder, violence, burglary, aggravated burglary, robbery, certain sexual offences and terrorism)
- Only applies to offences committed after 15<sup>th</sup> July 2015
- Two tests – adults and children (under 18s)
- Reverse burden of proof? Defence to raise issue of status and show element of defence on balance of probabilities

# CHILDREN (UNDER 18)

- No consent required for referral to NRM
- Presumed to be under 18 unless the contrary is proved (Anti-Trafficking Convention Article 10(3))
- “Merton” compliant age assessment: *[2003] EWHC 1689*
- No requirement of compulsion
- Issue = Sufficient nexus between the trafficking and the offence (*R v Joseph (para 35)*)