



## **PUBLIC PROSECUTION SERVICE POLICY FOR PROSECUTING CASES OF HUMAN TRAFFICKING**

### **SUMMARY OF CONSULTATION RESPONSES**

The PPS's Consultation on the draft Policy for Prosecuting Cases of Human Trafficking issued on 8 June August 2012 for a period of 12 weeks to close on 3 September 2012. Following requests from a number of organisations the consultation period was extended and therefore closed on 19 December 2012.

Fifteen responses were received from the following organisations;

**CARE in Northern Ireland**

**Department of Education**

**Department of Health, Social Services and Public Safety (DHSSPS)**

**Department of Justice**

**Disability Action**

**Law Centre (NI) (submission endorsed by Amnesty International UK)**

**Nexus Institute**

**Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)**

**Northern Ireland Council for Ethnic Minorities (NICEM)**

**Police Service of Northern Ireland**

**Police Superintendents' Association of Northern Ireland**

**Prison Reform Trust**

**South Tyrone Empowerment Programme (STEP)**

**The Trafficking Research Project (TTRP)**

**Women's Aid Federation Northern Ireland**

**Two Organisations did not provide formal responses but did make general comment.**

**The formal responses from the remaining thirteen organisations are summarised as follows:-**

## CARE

	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>Section 5: Prosecution Decisions</u></b></p> <p>Notes the CPS guidance includes a preference for human trafficking offences to be tried in the Crown Court, even though they could be tried in the Magistrates' court. Recommends that this preference for where an offence is tried is included in the PPS Policy document.</p>	<p>It is noted that Section 8 of the Criminal Justice Act (Northern Ireland) 2013 commenced on 26 April 2013 to provide that human trafficking offences are indictable only offences and therefore are triable only in the Crown Court.</p>
2	<p><b><u>Section 7: Prosecuting suspects who might be trafficked</u></b></p> <p>Concerned that the prosecution of victims of human trafficking is happening in practice. Quote the findings of the Anti-Trafficking Monitoring Group in their 2010 report. Advise that policy on non prosecution should be informed by the European Convention and European Directive. Recommend that the policy on non-prosecution in cases of duress is strengthened.</p>	<p>It is considered that the Policy is compliant with Article 26 (Non-punishment provision) of the European Convention and the European Directive and the relevant case law. The Policy explains that every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor militating against prosecution. This does</p>

	<p>The Policy does not specifically cover child victims of trafficking (this is specifically covered in the CPS Policy). Recommend that the case of children committing offences because of being trafficked is specifically covered in the Policy.</p>	<p>provide the prosecutor with the discretion not to prosecute in cases where it is considered that the public interest does not require prosecution. Sentencing following criminal conviction is a matter for the Judiciary. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p> <p>The Policy has been amended to reflect this recommendation.</p>
3	<p><b><u>Section 10: Keeping victims informed</u></b></p> <p>Recommend that if the prosecution decides not to proceed with a prosecution or substantially alter the charge, the prosecutor should offer to meet with the victim to explain the reason for the decision.</p>	<p>The section has been amended to clarify that a meeting will be offered.</p>
4	<p><b><u>Section 14: Helping Victims and Witnesses to Give Evidence</u></b></p> <p>Concern that interpreters are not routinely available and concern regarding their competency. Concern that policy does not give</p>	<p>The Policy has been amended to clarify that the PPS have a contract</p>

	<p>reassurance that victims will be suitably supported: <i>“The PPS will attempt to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.”</i></p> <p>Urge that interpreters should be competent, qualified and trained on the issues facing trafficking victims.</p> <p>Advocate the use of special measures for all types of trafficking victims (adult or children)</p>	<p>with NICEM Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters ' (NRPSI). This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p> <p>Legislation provides for the availability of special measures for vulnerable and intimidated witnesses. (Children are automatically deemed vulnerable due to their age). Prosecutors will make applications to the court for special measures in all cases that fall within the legislative provisions where the victim/witness wishes to avail of such assistance.</p>
5	<p><b><u>Section 16: Sentencing</u></b></p> <p>It is hoped that the NI Executive will follow the position in England and Wales to extend the unduly lenient sentences regime to include non-sexual exploitation offences as one of the offences referable to the Court of Appeal.</p>	<p>The PPS worked with the Department of Justice in this regard. Section 8 of the Criminal Justice Act (Northern Ireland) 2013 commenced on 26 April 2013 provides that human trafficking offences are indictable only offences and therefore are now offences which fall within those that may be</p>

	<p>The CPS guidance for England and Wales recognises that the prosecutor has a role in drawing the court’s attention to any aggravating or mitigating factors as the judge decides on a sentence. CARE urges that this role of the prosecutor should be included in the Northern Ireland policy given the European Directive stresses in Article 4 the need for higher penalties in certain circumstances.</p>	<p>referred to the Court of Appeal if the sentence passed is considered to be unduly lenient.</p> <p>The Policy has been amended to clarify this aspect of the Prosecutor’s role in assisting the court.</p>
6	<p><b><u>Section 21: Training and Quality Assurance</u></b></p> <p>Urges specialised training for prosecutors dealing with human trafficking cases, in line with Article 9(3)</p>	<p>Cases involving human trafficking are dealt with by a centralised section with PPS by experienced Senior Public Prosecutors. Additional training on human trafficking has been provided to prosecutors who deal with such cases and further training is planned following the publication of the Policy.</p>
7	<p><b><u>Annex 3: Legislation</u></b></p> <p>Seek clarification of legislation relating to controlling prostitution for gain – “note that offences of causing or inciting and controlling prostitution for gain are listed under both the Sexual Offences Act 2003 (sections 52 and 53) and the Sexual Offences (Northern Ireland) Order 2008 (Articles 62 and 63). We seek clarity on this point since Schedule 3 of the 2008 Order included a repeal of sections 52 and 53 of the Sexual Offences Act 2003.</p>	<p>The offences are listed under both the 2003 Act and 2008 Order as the legislation under which they would be prosecuted will depend on when the offence was committed, ie before or after 2 February 2009. Prior to commencement of the Sexual Offences</p>

	<p>Encourage the inclusion of the European Directive in the list of International Instruments</p> <p>Note that new extra-territorial trafficking offences are proposed in the Criminal Justice Bill currently before the Assembly and that these should be incorporated into any future policy revision, as should any changes further to the important Human Trafficking Bill (sponsored by Lord Morrow MLA) currently out to consultation. It would be helpful to have specific advice on prosecuting offences where the trafficking has taken place outside of Northern Ireland.</p>	<p>(NI) Order 2008 on 2 February 2009 these offences were provided for in NI by the Sexual offences Act 2003.</p> <p>The European Directive has been included in the list of International Instruments as recommended.</p> <p>Sections 6 and 7 of the Criminal Justice Act (NI) 2013 commenced on 26 April 2013 and the Policy has been amended to reflect the law.</p> <p>PPS will ensure that any required amendments are incorporated into any future policy revision.</p>
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**Department of Health, Social Services and Public Safety (DHSSPS)**

	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>Section 4</u></b></p> <p>Amend last paragraph of section 4 to ensure reference to the United Nations Convention on the Rights of the Child (UNCRC)</p>	<p>The Policy has been amended to include reference to the UNCRC.</p>
2	<p><b><u>Section 6: footnote 2</u></b></p> <p>Amend Footnote 2 to remove (Currently under review)</p>	<p>Amendment made as requested.</p>
3	<p><b><u>Section 8: Age Disputes</u></b></p> <p>Include reference to Judgement R (f2) v London Borough of Croydon [2011] EWCA Civ 59 which provides guidance on disputed Merton Age-Assessed cases</p>	<p>Reference included as required.</p>
4	<p><b><u>Section 14: Interpreters</u></b></p> <p>In addition to existing paragraph include reference to the need for interpreters to be trained, vetted, quality assured, culturally competent and able to communicate sympathetically and effectively with the victim.</p>	<p>Policy now makes reference to PPS contract with NICEM Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p>
5	<p><b><u>General Comment</u></b></p> <p>Health and Social Care Trusts in their engagement with child victims of human trafficking are most likely to have 'corporate</p>	<p>This comment is noted and the Policy has been amended to ensure that</p>

	parenting responsibilities' in respect of such children. Health and Social Care Trusts therefore will be required to be consulted in any decisions affecting the welfare of child victims	this requirement is communicated.
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**Department of Justice (DOJ)**

The PPS met with the DOJ and as a result a number of amendments were made to the Policy document to reflect current procedures.

In addition written responses and advices were provided which are summarised below:

	<b>Comment</b>	<b>PPS Response:</b>
1	<b><u>Section 6: Age Disputes</u></b>  Clarification required on Merton Age Assessment	This has been clarified taking into account advice from DOJ Child Protection Policy Branch and DHSSPS comments.
2	<b><u>Section 6: Victims and Witnesses</u></b>  Clarification is required as to service provider. It would also be useful to clarify what is meant by 'the first responders' and set out who they are for NI.	The Policy has been amended to clarify as requested.
3	<b><u>Annex 5: Contact Details</u></b>  The additional contact number of Migrant Help should be included (provided)  Reference should be made to the details of the support which can be found on NI Direct which links to PSNI etc	Additional details have been included as requested.

**Disability Action**

	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>General Comment</u></b></p> <p>Welcome the clear statement that if consultees find the information inaccessible in current format that appropriate steps can be taken to facilitate participation in the consultation. However the paper does not include what these steps may be (reference to recent DHSSPS consultation which also stated that a meeting to discuss consultation could be arranged if required).</p>	<p>This comment is noted and will be taken into consideration for future public consultations</p>
2	<p><b><u>Trafficking of people with disabilities.</u></b></p> <p>Welcome policy statement. Concern expressed about the lack of provision and understanding generally in relation to the trafficking of people with disability.</p>	<p>Some amendments have been made to the Policy to highlight issues relevant to persons with a disability who may be victims of human trafficking.</p>
3	<p><b><u>Section 1: Introduction</u></b></p> <p>In addition to reasons given in policy for reluctance of some victims to report highlights that the cultural perceptions of disability and the attitudes of people towards disability may also be a factor.</p> <p>Highlight the key role of clear channels of accessible communication and accessible information for disabled victims- importance of same highlighted in recent study by Harper et al 2012.</p>	<p>These comments are noted and the policy has been amended.</p> <p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and</p>

	<p>Highlight that the consultation document does not consider the implications and requirements of the UNCRPD with respect to Article 8 Awareness raising, Article 9 and 21 in relation to the accessibility of information, Article 16 Freedom of Exploitation, violence and abuse, and Article 13 Statistics and Data collection. All these matters are relevant to the policy and should be drawn to the attention of policy makers and practitioners.</p>	<p>witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance.</p> <p>Reference to the United Nations Convention on the Rights of Persons with Disabilities has been added to list of international instruments in Annex 3</p>
4	<p><b><u>Section 2: What is Human Trafficking?</u></b></p> <p>While it is understood that the policy is written based on current law it would have been useful to examine what matters are excluded and to outline alternative actions.</p> <p>Consideration should also be given to giving examples pertinent to disability throughout this section, for example, under enabling others to acquire benefit (page 6), or consideration of a person’s capacity to consent (page 4).</p>	<p>The Policy highlights that Prosecutors will consider all potential offences which may be prosecuted in addition to or as alternative to offences of human trafficking if the available evidence meets the Evidential Test in respect of any offence</p> <p>This consideration is included in the Policy.</p>
5	<p><b><u>Section 5: Prosecution Decisions</u></b></p> <p>Raise concern that victims who are disabled may be disadvantaged in their access to justice due to the negative stereotypes of disabled people common in society – Reference the Criminal Justice Inspectorate’s 2010 thematic inspection on sexual violence and abuse which found that in cases where victims had learning difficulties or</p>	<p>Legislation has commenced to enable a Registered Intermediary (RI) to be appointed to assist victims and/or witnesses in giving evidence. RI’s are</p>

	<p>a physical disability and the issue of victim and perpetrator credibility was critical, it was unlikely that many of these cases would be directed for prosecution or result in a successful conviction. Stress that such difficulties may be only effectively tackled through awareness raising in the criminal justice system and the general public and clear policy guidelines to decision makers - Recommend that this matter is discussed in the policy and that clear directions are made.</p>	<p>communication specialists who facilitate communication between a victim or witness and the court. They are also available during the police investigation stage to enable a victim or witness to provide their evidence to police, for example during their video recorded police interview and at consultations, if required. This should ensure that victims and/or witnesses with learning difficulties or physical disability which may affect their understanding or communication are able to fully participate in the criminal justice process and enable them to give their best evidence. The PPS have been working with the Department of Justice to enable the commencement of this provision.</p>
<p>6</p>	<p><b><u>Section 6: Victims and Witnesses</u></b></p> <p>Recommend the addition of disability as a factor which will influence a victim's experience of trafficking (Page 14, paragraph 4).</p> <p>Note that there is no clear statement in the policy that any support given to victims is/must be fully accessible (National Referral Mechanism, Page 16).</p> <p>Note that there is no indication in the policy about the existence of any contact protocols between disability groups and designated First</p>	<p>The Policy has been amended to include this recommendation.</p> <p>The PPS is not involved in the NRM process.</p> <p>The PPS is not a designated First Responder however PPS</p>

	<p>Responders. Voluntary services are likely to be the first points of contacts for many trafficked people - Recommend that the PPS consider establishing such protocols and instigating an awareness campaign amongst disability support groups (National Referral Mechanism, Page 16).</p>	<p>will raise this recommendation at future meetings of the OCTF Human Trafficking Sub Group.</p>
<p>7</p>	<p><b><u>Section 9: Consultation.</u></b></p> <p>Welcome the indication in this section that consultation rooms will be properly equipped - Recommend the installation of loop systems, wider doors for wheelchair access and suitable seating and lighting arrangements and availability of suitable toilets.</p> <p>Recommended that if a person with a disability wishes a person to facilitate communication and understanding and to act in a supportive role for them then this should be facilitated in addition to an interpreter if required.</p>	<p>All PPS buildings conform to the statutory requirements of the Disability Discrimination Act 1995. Assessment of user needs will be conducted prior to any consultation, if required.</p> <p>Legislation has commenced to enable a Registered Intermediary (RI) to be appointed to assist victims and/or witnesses in giving evidence. RI's are communication specialists who facilitate communication between a victim or witness and the court. They are also available during the police investigation stage to enable a victim or witness to provide their evidence to police, for example during their video recorded police interview and if required at consultations. This should ensure that victims and/or witnesses with learning difficulties or physical disability which may affect their understanding or communication are able</p>

	<p>Recommended that any paperwork should be available during the meeting in a suitable accessible format.</p>	<p>to fully participate in the criminal justice process and enable them to give their best evidence. The PPS have been working with the Department of Justice to enable the commencement of the provision and to ensure that the required procedures are in place.</p> <p>Should any written document be required to be provided in an alternative/accessible format this will be facilitated.</p>
<p>8</p>	<p><b><u>Section 10: Keeping Victims Informed</u></b></p> <p>Comment that all contact should be in an accessible format chosen by the victim / witness. Noted that the Community Liaison Team is available via an information line to assist with any queries. Note that there is no indication in the policy that this information available is available in other formats or methods or whether a personal visit can be arranged if required.</p>	<p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance. VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of</p>

		communication.
10	<p><b><u>Annex 5: Contacts</u></b></p> <p>Recommend that specialist and general disability support groups are added to the list.</p>	<p>The Policy has been amended to include specialist and general disability groups as recommended.</p>

**Law Centre (NI) Submission endorsed by Amnesty International UK**

	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>Introductory Comments</u></b></p> <p>It would be helpful if the Policy could be clearer about identifying where specific duties fall: it is often unclear whether responsibility lies with PPS or PSNI</p> <p>Mindful that there have to date been two convictions for the offence of human trafficking in NI. There may be important opportunities for learning about GB experience including a consideration as to why, in some instances, the PPS may pursue a 'lesser offence' rather than a trafficking offence.</p>	<p>The Policy explains the PPS relationship with the investigating agencies. The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance. VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of communication.</p> <p>The Policy includes a section which explains the circumstances in which a plea may be accepted to an alternative offence. Section 5 of the Policy explains the Test for Prosecution.</p>

<p>2</p>	<p><b><u>Introduction</u></b></p> <p>It might be useful to set out the key sections of the Trafficking convention relevant to Prosecution eg Art 1, 27-31 as well as the requirements of Article 4 ECHR.</p> <p>It would be useful if the Policy outlined the relevant international law obligations relating to the victims right to participate in proceedings.</p> <p>The Policy refers to a ‘range of legal measures available to support and protect trafficked victims’. It would be useful to provide a comprehensive list of these in summary form here.</p> <p>The introduction should include a clear statement recognizing the complexity of human trafficking cases so that prosecutors are aware that there may be a number of different legal processes taking place in parallel to or subsequent to criminal proceedings....which has significant implications for victims.</p> <p>The Policy should recognise the significance of</p>	<p>The Convention is referred to in subsequent sections of the Policy. Section 4 of the Policy has been amended to include reference to Article 4 ECHR</p> <p>Although these specific international obligations are not outlined in the Policy the Policy does illustrate the role that victims have in the criminal process and also highlights that the PPS recognises the central role of victims in achieving successful prosecutions and reinforces the PPS commitment to ensuring that the views and interests of victims are considered at every stage of the criminal process.</p> <p>The legal measures referred to are further explained in Section 14 of the Policy.</p> <p>The Policy has been amended in light of this recommendation.</p> <p>The Policy has been</p>
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	<p>immigration status(or lack of) for victims of trafficking</p> <p>The Policy should also recognise that because of the number of ongoing legal and welfare processes, the victim may be required to provide information on a number of occasions with the resultant risks of re-traumatising the victim.</p> <p>The Policy should seek to ensure that prosecutors are mindful of the risks involved in victims giving evidence and their particular cultural/religious background that could make it even more difficult to give evidence in open court.</p> <p><b>Working with Others</b></p> <p>Welcome the PPS's recognition of the need for multi-agency response.</p> <p>It may be useful for the Policy to refer to Art 35 of the Convention which requires states to encourage co-operation with NGO's and civil society and to outline ways in which the PPS will endeavour to engage.</p>	<p>amended to highlight that fear of immigration authorities may also be a major concern for victims especially if their immigration status has not been confirmed.</p> <p>The Policy has been amended in light of this comment.</p> <p>The Introduction to the Policy has been amended to consider cultural/religious background.</p> <p>This positive comment is noted.</p> <p>It is considered that the Policy already confirms that PPS are committed to working with both Government and Non-Governmental Organisations in accordance Article 35 of the Convention.</p>
<p>3</p>	<p><b><u>Section 2: What is Human Trafficking</u></b></p> <p>Policy should make clear that international definition of trafficking is not contained in UK domestic Law. UK Legislation should be set out in section 2 rather than in Annex 3</p> <p>Policy should explain that the Trafficking Convention definition is not necessarily sufficient to result in criminal prosecution, in part</p>	<p>Section 2 of the Policy has been amended to include the legislation relevant to the offences of human trafficking. It is considered that this inclusion illustrates the elements of the offence</p>

	<p>due to the different standard of proof required for NRM and Criminal Proceedings.</p> <p>It may be useful to expand on the three constituent elements of trafficking.</p> <p><b>Types of exploitation</b></p> <p>Recommend that each type be given separate heading and each category should begin with a criminal definition of the offence, followed by concise definition.</p> <p>Paragraph outlining challenges facing PPS in prosecuting could be expanded to canvas range of reasons why victims may be reluctant to report.</p> <p>Enabling others to acquire benefit – would welcome clarity about the reference to benefit acquisition.</p> <p>Children – Would be grateful for further information about the numbers of children believed to be affected by being exploited for benefit fraud.</p>	<p>which must be proved by the prosecution. Section 5 of the policy explains the burden and standard of proof in criminal cases.</p> <p>Section 2 of the Policy has been amended to include the legislation relevant to the offences of human trafficking.</p> <p>The Introduction to the Policy, as amended, outlines reasons why victims may be reluctant to report.</p> <p>The relevant paragraph has been amended in light of this comment.</p> <p>This paragraph has been amended. It is difficult to estimate the true extent of children who are trafficked for the purpose of benefit fraud. A small survey conducted by CEOP identified 19 children who had potentially been trafficked for this purpose between 1/4/08 and 31/3/09. (CEOP, <i>'The trafficking of children into and within the UK for the benefit fraud purposes'</i> (October 2010), page 4, para 2.1.</p>
4	<p><b><u>Section 3: What is Smuggling?</u></b></p> <p>It would be helpful if the section explained why</p>	

	<p>the Policy is distinguishing between trafficking and smuggling.</p> <p>The second paragraph suggests that smuggled persons are always exercising a choice – do not think that this tallies with the experiences of those fleeing persecution or conflict.</p>	<p>It is considered that the final sentence in the preceding section explains that people may confuse trafficking and smuggling.</p> <p>The Policy has been amended in light of this comment.</p>
<p>5</p>	<p><b><u>Section 4: The Role of the PPS</u></b></p> <p>Would welcome a clear statement that, while the PPS observes international human rights standards, it makes prosecution decisions under domestic provisions.</p> <p>Reference to the ECHR should include a discussion of Article 4 ECHR and relevant Strasbourg case law.</p> <p>Ask PPS to consider nominating specialist human trafficking prosecutor (or specialist unit) to enable PPS to develop expertise in trafficking as well as awareness of complexities and sensitivities of such cases.</p>	<p>In making prosecutorial decisions for offences provided for by domestic provisions and in applying domestic law in criminal procedures the PPS must still act in accordance with the ECHR.</p> <p>Reference to Article 4 ECHR has been included in Section 4. Training for Prosecutors will include reference to relevant case law.</p> <p>Cases involving human trafficking are dealt with by a centralised section within PPS by experienced Senior Public Prosecutors. Additional training on human trafficking has been provided to prosecutors who deal with such cases and further training is planned following the publication of the Policy.</p>

	<p><b>Relationship with the investigator</b></p> <p>In cases where victim has ongoing asylum claim, the PPS should exercise extreme caution when contacting authorities in a victim's home country. Failure to do so may increase risk to victim or family members. Recommend that PPS informs itself of any outstanding asylum claim (or other human rights claim) before engaging with its counterparts in other jurisdictions.</p>	<p>PPS will ensure this recommendation is include in further guidance and training for Prosecutors</p>
	<p>View that victims do not understand the work of the PPS and in particular so not understand that they are a 'witness'. Although their views may be sought they may be overridden by wider interests (Public Interest). Policy should explain how PPS will communicate its work to the victim to ensure that they understand the process and key concepts.</p>	<p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU).</p>
<p>6.</p>	<p><b><u>Prosecution Decisions</u></b></p> <p>Query whether there are any timeframes within which prosecutorial decisions will normally be taken</p> <p><b>The Evidential Test</b></p> <p>May be useful to outline some of the difficulties a prosecutor may face with regard to obtaining sufficient evidence and some suggestions for how the prosecutor might address these.</p>	<p>Although PPS do have internal targets in relation to timeliness of decision the timeframes within which prosecutorial decisions will be taken will depend on the particular circumstances of each case. Prosecutors must ensure that they have all the necessary evidence and information to enable them to take a fully informed prosecutorial decision. If, following submission of a police file, further information is required to enable a prosecutorial decision to be made then the Prosecutor will issue a</p>

	<p><b>The Public Interest Test</b></p> <p>Recommend that trafficking cases are included as a ‘public interest consideration for prosecution’. Therefore suggest amendment to the Code for Prosecutors xviii: where there is any element of exploitation</p>	<p>Decision Information Request (DIR). The PPS have been working on an initiative aimed at reducing the number of DIR’s in indictable cases. This will involve Prosecutors engaging with police early in the case preparation stage to ensure that investigators have a clear understanding of the PPS evidential requirements in the event of a prosecution and thus reduce the time taken to take decisions and progress cases.</p> <p>The PPS Code for Prosecutors is currently under review and the suggested amendment has been added to the consultation document.</p>
<p>7.</p>	<p><b><u>Victims and witnesses</u></b></p> <p>Recommend that all victims of trafficking are considered vulnerable. Consistent with DOJ &amp; DHSSPS guidance. Consider amending Policy to avoid confusion</p> <p><b>Children</b></p> <p>Consider that it would be useful to cross reference DHSSPS/PSNI guidance.</p>	<p>It is considered that such amendment could lead to confusion as the Policy refers to ‘vulnerable’ victims in terms of special measures. Training for Prosecutors will highlight that victims of trafficking are considered vulnerable.</p> <p>This is now included in the Policy</p>

	<p>Query whether the Policy be amended to reflect changes in future ie implementation of EU directive by April 2012 to appoint guardian for trafficked children?</p> <p>Policy should make explicit references to the complexities of child trafficking cases and the specialist care required when obtaining evidence, including being mindful of other ongoing matters such as contact proceedings or asylum claims</p> <p><b>Age disputes</b></p> <p>Highlight that where there is dispute as to age, both the Convention and Directive state that s/he must be given benefit of doubt and accorded special protection measures.</p> <p><b>The National Referral Mechanism</b></p> <p>Paragraph 2 of page 16 requires amending to accurately reflect the process</p> <p>Suggest Policy should reflect other agencies that may provide accommodation to victims.</p> <p>Recommend that, for clarity in relation to residence permits, the word “temporary” is deleted. Policy should be clear that a resident permit can be granted in light of a victim’s personal circumstances (victim does not have to assist authorities).</p>	<p>The Policy will be kept under review and will be amended if required to reflect any subsequent changes to law or procedure.</p> <p>The Policy has been amended to make further reference to the issues to be considered in cases involving child victims</p> <p>It is considered that this is already explained in the Policy</p> <p>The Policy has been amended in light of these advices.</p> <p>The Policy has been amended and details are included in Annex 5 of other agencies who may provide services including accommodation to victims.</p> <p>The Policy has been amended as requested.</p>

<p>8.</p>	<p><b><u>Prosecuting suspects who might be trafficked victims</u></b></p> <p>Consider that it would be helpful for the Policy to refer to the ‘non punishment’ provisions outlined in Art 26 of the Trafficking Convention and EU Directive</p>	<p>The Policy has been amended in light of this comment and to make reference to recent Court of Appeal guidance. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p>
<p>9.</p>	<p><b><u>The views and interests of the victim</u></b></p> <p>Query what practical steps PPS take to consider how best to ensure that victims can give their best evidence.</p>	<p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance – this will include identifying whether a victim or</p>

	<p><b>What if the victim withdraws support for the prosecution?</b></p> <p>In relation to risk assessment, will, where victim consents, input be sought from NGO's/legal representatives and a child's guardian? Will assessment consider risks outside the jurisdiction?</p>	<p>witness may require the assistance of special measures to enable them to give their best evidence. Victims will also be provided with information on the special measures that may be available to them to assist them to give their best evidence at court. The PSNI are also responsible for identifying the particular needs of victims and witnesses and advising the PPS of these. Prosecutors may also identify a victim's particular needs at consultation or during communication with a victim. The PPS will continue to invest in training of prosecutors and support staff on special measures and will continue to input into PSNI training to ensure that such needs are identified at the earliest possible stage. Other steps that may be taken to assist victims in giving evidence are included in the Policy.</p> <p>The Investigator (usually PSNI) will be responsible for carrying out any risk assessment and advising the PPS.</p>
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	<p><b>What happens when a decision is taken to continue with a prosecution against a victim's wishes?</b></p> <p>It would be useful if the Policy is clear about who is responsible for advising the victim that a prosecution can take place even if s/he withdraws support.</p>	<p>The Policy has been amended in light of this comment.</p>
<p>10.</p>	<p><b><u>Consultation</u></b></p> <p>Consider it important that victims are briefed in advance about the purpose of the consultation meeting. Important that victim is aware that s/he may be subject to 'uncomfortable or probing questions'.</p> <p>Important that those attending consultation are well briefed and experienced in the conduct of human trafficking cases</p> <p>Recommend that the legal representative/support worker is invited to attend where appropriate.</p> <p>Policy should make explicit reference to the Best practice Guidelines on Interpreters.</p> <p>Every attempt should be made to ensure that the interpreter used is familiar with the case and</p>	<p>PPS guidance for prosecutors in relation to consultations address the issues highlighted.</p> <p>Cases involving human trafficking are dealt with by a centralised section within PPS by experienced Senior Public Prosecutors. Additional training on human trafficking has been provided to prosecutors who deal with such cases and further training is planned following the publication of the Policy</p> <p>The victim's legal representative or support worker is entitled to attend at consultation with a victim where appropriate.</p> <p>The Policy has been amended as required and to include reference to PPS contract with NICEM Connect for the provision of interpreters</p>

	<p>if possible has been used by PSNI in previous interviews with the victim.</p> <p>In cases involving sexual violence, or where a victim requests, a female interpreter might be necessary. PPS should note that people often indicate a willingness to proceed in English when they may benefit from an interpreter.</p>	<p>who are 'National Register of Public Sector Interpreters ' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p> <p>PPS will ensure that these issues are highlighted to prosecutors in training and further guidance.</p>
11	<p><b><u>Keeping victims informed</u></b></p> <p>Concerns that current system for keeping victims informed is ineffective. Hope this can be tackled through this guidance and through change of practice</p> <p>Police should pin point what agency is tasked with informing the victim at each stage. Whether any time frames etc</p> <p>Recommend that a single named contact in PPS is appointed who can provide victim and/or legal representative with timely updates.</p> <p>PPS should be mindful that victims may not understand criminal justice process and should be prepared to explain the process and its purpose in clear, straightforward language</p> <p>Welcome further information about the role of PPS Community Liaison Teams</p> <p>Request that PPS notify any legal representative and/or support worker of court dates</p>	<p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance.</p> <p>VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of</p>

		communication.
12	<p><b><u>Request for reasons</u></b></p> <p>Welcome the commitment to provide victims with detailed written reasons without request being made.</p>	PPS welcomes this positive comment
13	<p><b><u>Review of decisions</u></b></p> <p>Recommend that a copy of any reasons not to prosecute is also sent to the legal representative where appropriate.</p>	The victim's legal representative will be provided with a copy of same upon request and with the consent of the victim.
14	<p><b><u>Bail</u></b></p> <p>PPS (or CLT or PSNI) should notify victim if defendant granted bail</p>	The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The victim should be notified of the grant of bail by VWCU
15	<p><b><u>Helping victims and witnesses to give evidence</u></b></p> <p>Ask how the PPS envisages working with intermediaries? When provision is likely to come into force? Will intermediaries be trained to work through an interpreter?</p>	Legislation has commenced to enable a Registered Intermediary (RI) to be appointed to assist victims and/or witnesses in giving evidence. RI's are communication specialists who facilitate communication between a victim or witness and the court. They are also available during the police investigation stage to enable a victim or witness to provide their evidence to police, for

	<p>Request that the 'Code for Victims of Crime' is amended to include victims of human trafficking in the categories of victims who may be considered to be intimidated witnesses.</p> <p><b>Anonymity &amp; reporting restrictions</b></p> <p>Urge PPS to consider whether, in all the relevant circumstances of the case, it is necessary to apply for media reporting restrictions (eg cases where a victim may not want reporting restrictions)</p>	<p>example during their video recorded police interview and if required at consultations. This should ensure that victims and/or witnesses with learning difficulties or physical disability which may affect their understanding or communication are able to fully participate in the criminal justice process and enable them to give their best evidence. The PPS have been working with the Department of Justice to enable the commencement of the provision and to ensure that the required procedures are in place.</p> <p>The Code for Victims of Crime is currently being revised. This request will be brought to the attention of the Department of Justice who are responsible for the production of the Code.</p> <p>Victims have an option to waive their right to anonymity in the media although there may be cases where it is necessary to maintain such anonymity, for example to protect other victims. Prosecutors will consider the individual circumstances of every</p>
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	<p>As there is no system of legal guardianship for separated minors (including trafficked children) in NI, in many instances, a Voices of Young People in Care (VOYPIC) Independent Advocate will be working on behalf of the child. It would make sense for the PPS to liaise with the VOYPIC advocate and/or legal representative.</p> <p><b>Compensation</b></p> <p>Recommend clear onus on PPS (or other statutory agency) to advise witness on accessing compensation</p>	<p>case, including the views of the victim when considering whether to make an application to the court for reporting restrictions.</p> <p>This comment is noted. The PPS will also keep under review the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill (clause 12 provides for the appointment of a child trafficking guardian for each child victim of trafficking)</p> <p>The PPS can make an application to the court upon conviction of an offender for a compensation Order in respect of a victim of human trafficking and will do so in all appropriate circumstances.</p> <p>With respect to accessing compensation via the Compensation Agency, this is a civil procedure and not within the remit of the PPS. However the PPS (VWCU) will signpost victims to the Witness Support Service run by Victim Support NI who can provide advice and assistance to in respect of applying to the</p>
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		Compensation Agency for compensation under the Criminal Injuries Compensation process.
16	<p><b><u>Sentencing</u></b></p> <p>Policy should outline the process related to obtaining a Victim Impact Statement and confirm who is responsible for advising the victim about this process.</p> <p><b>Unduly lenient sentences</b></p> <p>Would welcome efforts to bring section 4 of the Asylum and Immigration Act 2004 within the remit of offences which can be referred to the court of Appeal if sentence imposed is considered to be unduly lenient</p>	<p>The PPS is currently working on a DOJ lead project to implement a Victim Personal Statement Scheme. The Policy will be amended to reflect the process when the scheme is launched.</p> <p>Section 8 of the Criminal Justice Act (Northern Ireland) 2013 commenced on 26 April 2013 to provide that human trafficking offences are indictable only offences and therefore are now offences which fall within those that may be referred to the Court of Appeal if the sentence passed is considered to be unduly lenient.</p>
17	<p><b><u>Section 17 Ancillary or additional orders</u></b></p> <p>Would welcome presumption that the prosecution will apply for a Compensation Order in human trafficking cases</p> <p>Different routes for proceeding with compensation should be set out in the Policy</p>	<p>The PPS will apply for a Compensation Order in respect of identifiable victims in all appropriate cases.</p> <p>The PPS can make an application to the court upon conviction of an offender for a</p>

		<p>compensation Order in respect of a victim of human trafficking and will do so in all appropriate circumstances The PPS can only provide advices regarding compensation as ancillary to criminal proceedings. The PPS (VWCU) will signpost victims to the Victim Support NI who can advise victims of different routes for proceeding with Civil Compensation and can assist in making a civil claim for compensation.</p>
18	<p><b><u>Section 21 Training &amp; quality assurance</u></b></p> <p>Welcome PPS commitment to training staff. Recommend that all prosecutors working on trafficking cases have undergone specialist training.</p>	<p>The PPS will continue to invest in training for prosecutors.</p>
19	<p><b><u>Annex 5 Contact details</u></b></p> <p>Request amendment to Law Centre details.</p>	<p>Amended as requested</p>





**Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)**

	<b>Comment</b>	<b>PPS Response:</b>
1	<p>Welcomes the publication of the Policy.</p> <p>Find the clarification of definitions and rationale for making decisions about prosecution helpful for understanding amongst organisations which can provide services to victims</p> <p>Support the view that “the safety and well-being of the victim will be a prime consideration”.</p> <p>Welcome the commitment to helping victims and witnesses to give evidence. Hope that the details of the Policy will be communicated clearly as to offer some level of reassurance to individual witnesses and organisations which support them.</p>	<p>The PPS welcomes these positive comments.</p>

## Northern Ireland Council for Ethnic Minorities (NICEM)

	<b>Comment</b>	<b>PPS Response:</b>
1	<p>Welcomes the fact that the observance of international human rights standards is recognised in the aims of the PPS.</p> <p>As a public authority the PPS is under an obligation to promote equality of opportunity and good relations under section 75 of the Northern Ireland Act 1998.</p> <p>Suggest that Policy makes more reference to the standards of the UN Convention against Transnational Organised Crime and the Counsel of Europe Convention on Action Against Trafficking in Human Beings.</p>	<p>The PPS welcomes this positive comment.</p> <p>The PPS Equality Scheme, which sets out how the Service proposes to fulfil its obligations under s.75 of the Northern Ireland Act 1998, was drafted and issued for consultation between 8 July 2011 and 7 October 2011. Following consideration of the comments made the Equality Scheme was submitted to the Equality Commission for approval. The new scheme was approved by the Equality Commission on 28 March 2012. A copy of the PPS Equality Scheme, Action Plan and Disability Action Plan are available on the PPS website at <a href="http://www.ppsni.gov.uk/Equality-5023.html">http://www.ppsni.gov.uk/Equality-5023.html</a></p> <p>It should be noted that matters relating to the prosecution of offences are excluded from Section 75 by Section 38 of the Justice (Northern Ireland) Act 2002.</p> <p>The Policy has been amended as suggested and now includes more reference to the Counsel of Europe Convention on</p>

	<p>Recommend that the PPS incorporate the key tenets of the EU Directive on Victim's Rights which is due to be finalised in 2012/13 into the Policy.</p>	<p>Action Against Trafficking in Human Beings in the main body of the Policy where applicable. Annex 3 of the Policy has been amended to include reference to the Council of Europe Convention on Action Against Trafficking in Human Beings.</p> <p>This comment is noted. It is considered that the key tenets of the EU Directive on Victim's Rights are incorporated into the Policy. The Policy states that Victims will be treated with respect and also provides a commitment by PPS to ensure that Prosecutors are properly trained to ensure that they can effectively prosecute cases of Human Trafficking. The establishment of a Victim Witness Care Unit (VWCU) will ensure that victims get information on their rights and their case in a way they understand and the VWCU will refer victims to existing support agencies such as Victim Support NI and NSPCC. The Policy contains information on the special measures available to vulnerable and intimidated victims to assist them to participate in proceedings and give their best evidence. It also ensures that the views and interests of victims are</p>
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	<p>Emphasis should be placed on keeping the victim informed of and involved in the prosecution process. It is essential that at every point of contact the victims needs are taken into account in terms of information being provided in an accessible format and in a language that the victim understands.</p>	<p>amongst prosecutors that there are significant implications for victims who may be required to provide information on a number of occasions with the resultant risks of re-traumatizing the victim. The PPS will continue to invest in training of prosecutors and support staff on special measures, for example, the use of pre-recorded evidence in chief, and will continue to input into PSNI training to ensure that such needs are identified at the earliest possible stage.</p> <p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance. VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of communication.</p>
	<p>Interpreters or translators used by the PPS</p>	<p>The Policy has been</p>

	<p>should be specially trained so that they are aware of the indicators of human trafficking.</p>	<p>amended to include reference to PPS contract with NICEM Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters ' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p>
<p>3</p>	<p><b><u>Non-prosecution or non-penalisation of the victim.</u></b></p> <p>It is stated on page 17 of the draft policy that the PPS cannot offer blanket immunity from prosecution for trafficked victims due to the Justice (Northern Ireland) Act 2002. Non-prosecution has been pursued in a number of other jurisdictions, such as the USA, and should be considered by the PPS. If the necessary change in the law does not take place, which would provide the opportunity not to prosecute, the PPS should consider other options as if the public interest test does not allow for the equal treatment of all victims. For example, Article 8 of the EU Directive on Human Trafficking provides for non-application of penalties to the victim, which is something the PPS should take into consideration.</p>	<p>It is considered that the Policy is compliant with Article 26 (Non-punishment provision) of the European Convention and the European Directive and the relevant case law. The Policy explains that every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor militating against prosecution. This does provide the prosecutor with the</p>

		<p>discretion not to prosecute in cases where it is considered that the public interest does not require prosecution. Sentencing following criminal conviction is a matter for the Judiciary. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p>
<p>4</p>	<p><b><u>Child victims</u></b></p> <p>It is acknowledged that child victims “will need extra support” and child victims are referred to throughout the draft policy. However, there is no specific section detailing the kind of support measures and inter-agency work that will take place.</p> <p>It is imperative that any such care plan is devised with respect to the four overarching principles of the UN Convention on the Rights of the Child (CRC)<sup>1</sup>, particularly non-discrimination (Article 3).</p> <p>As it is likely that child victims of human trafficking in Northern Ireland will belong to an ethnic minority group, it is essential that state agencies, including frontline staff, working with child victims do not suffer further by</p>	<p>The Policy has been amended in light of these comments to include reference and a link to the “Working Arrangements for the Welfare and Safeguarding of Child Victims of Human trafficking” which details the support measure and inter-agency work that will take place.</p> <p>PPS staff, both legal and non-legal are required to undertake mandatory Equality and Diversity training to ensure that they</p>

	<p>experiencing discrimination.</p> <p>Given the particular vulnerability of child victims, it is necessary that any engagement with the criminal justice system is conducted in a child-friendly manner.</p>	<p>can deal appropriately with all victims including victims and witnesses from an ethnic minority background.</p> <p>Legislation has commenced to enable a Registered Intermediary (RI) to be appointed to assist victims and/or witnesses in giving evidence. RI's are communication specialists who facilitate communication between a victim or witness and the court. They can intervene to advise the court as to the age appropriate language which should be used when questioning or communicating with a child witness. They are also available during the police investigation stage to enable a victim or witness to provide their evidence to police, for example during their video recorded police interview and if required at consultations. The availability of RI's should ensure that child victims are able to fully participate in the criminal justice process and enable them to give their best evidence and that communication and questions are appropriate for the child's age and understanding. The PPS have been working with the Department of Justice to</p>
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		enable the commencement of the provision and to ensure that the required procedures are in place. Prosecutors have also received training in communicating with child witnesses and it is intended that further training will be delivered.
5	<p><b><u>Prosecution decisions</u></b></p> <p>Investigators should be specially trained to recognise cases of human trafficking, even if the PSNI had not identified the incident as being such. Therefore, it is necessary for the PPS to develop a non-exclusive set of indicators to help investigators identify a particular situation as human trafficking.</p> <p>Strongly urges the PPS to consider indicators developed by the International Labour Organisation (ILO) and European Commission which should be used as a guide in making a decision whether to prosecute for human trafficking or not.</p>	<p>The PPS are not investigators. Investigation is the role of the PSNI. However, further guidance will be developed for Prosecutors to include indicators of human trafficking to assist prosecutors to identify potential cases where human trafficking has not been identified by the Investigator.</p> <p>The Policy has been amended in light of this comment and reference to the indicators developed by the International Labour Organisation (ILO) and European Commission have been included.</p>
6	<p><b><u>Training of law enforcement officials</u></b></p> <p>The final policy document should contain a more extensive list of specific mandatory trainings that should be provided to ensure that all staff have the skill set required to effectively prosecute human trafficking.</p>	<p>The Policy has been amended to contain a commitment that training will be provided to all relevant staff to ensure that the staff have the skills required to</p>

	<p>Staff should also receive anti-discrimination and equality training in order to ensure that they can deal appropriately with victims, as often victims will be from an ethnic minority background</p>	<p>effectively prosecute cases of human trafficking.</p> <p>PPS staff, both legal and non-legal are required to undertake mandatory Equality and Diversity training to ensure that they can deal appropriately with all victims including victim's and witnesses from an ethnic minority background.</p>
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**Police Service of Northern Ireland**

	<b>Comment</b>	<b>PPS Response:</b>
1	Welcomes the publication of the Policy  Consider that it would be useful to provide some more information as to the role of SOCA	This positive comment is noted.  Further information as to the role of SOCA has been included as suggested.

**Police Superintendents' Association of Northern Ireland**

	<b>Comment</b>	<b>PPS Response:</b>
1	Welcomes the publication of the Policy  Consider Policy to be informative and clear	PPS welcomes these positive comments.

**Prison Reform Trust**

	<b>Comment</b>	<b>PPS Response:</b>
1	<p>Concerned that victim's of human trafficking continue to be prosecuted for offences directly related to being trafficked.</p> <p>Highlight that PPS have a role in identifying victims of trafficking. Refer to case law which highlights the need for prosecutors and defence practitioners to take all reasonable steps to do this and to be proactive in their approach.</p> <p>It is not in the public interest to prosecute offences caused by coercion where the defendant is a trafficked victim. To ensure that this happens, prosecutors must be trained in identifying victims of trafficking and aware of the offences that people who have been trafficked might commit. They should also investigate whether the offence is a result of trafficking even if the person was not under the control of someone else at the time of arrest.</p> <p>Requires robust evidence on the degree to which people had freedom of choice in their involvement in the offence. Evidence of coercion, exploitation and duress should be integral to all sentencing decisions where the offence could be via trafficking and all criminal justice proceedings should be compliant with the United Nations Protocol to Protect Victims of Trafficking.</p> <p>Prosecutors should check that people without UK passports and who are arrested have not been compelled to enter a plea on a criminal matter without access to proper legal support and advice.</p>	<p>These concerns are noted and will continue to be addressed in training for prosecutors.</p> <p>The Policy has been amended to include reference to Article 26 of the Trafficking.</p> <p>The Court of Appeal case of R v N; R v LE [2012] EWCA Crim 189, illustrates that the UK's obligation under Article 26 of the Trafficking Convention was normally achieved by implementing the protection of victims of trafficking from prosecutions for crimes they may have been compelled to commit consequent to the trafficking. Therefore, the Prosecution had the discretion, however strong the evidence, to decide that it would be inappropriate to proceed or to continue with the prosecution of a defendant who was unable to advance duress as a defence but who fell within the protective ambit of Article 26 of the Trafficking Convention.</p> <p>It is considered that the Policy is compliant with Article 26 (Non-punishment provision) of</p>

		<p>the European Convention and the European Directive and the relevant case law. The Policy explains that every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor militating against prosecution. This does provide the prosecutor with the discretion not to prosecute in cases where it is considered that the public interest does not require prosecution. The Policy includes reference to relevant case law including R v O [2008] EWCA Crim 2835 which highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be proactive in causing enquiries to be made. Sentencing following criminal conviction is a matter for the Judiciary. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about</p>
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	<p>Prosecutors should also ensure that people who have been arrested and have uncertain immigration status should be guaranteed independent immigration advice and interpreters.</p>	<p>how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p> <p>The Policy has been amended to include reference to the PPS contract with NICEM Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters ' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience. The PPS will ensure that all victims and witnesses who require an interpreter will be provided with a qualified and appropriate interpreter. With regard to suspects/defendants, the PSNI are responsible for ensuring that an interpreter is provided for the suspect at the police station and NICTS will ensure that an appropriate interpreter is available at court. Both PSNI and NICTS also have a contract with NICEM</p>
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	<p>Recommend expansion of the leave of stay for victims of trafficking to facilitate better data gathering on those behind this profitable illegal industry; and research commissioned into foreign national prisoners to gain a more accurate knowledge of the extent of overlap between victims of trafficking and foreign national prisoners.</p>	<p>Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters '. The PPS, as the prosecuting authority, is not responsible for arranging immigration advice or interpreters for defendants. Arrested persons have an automatic right to independent legal advice and representation at the police station.</p> <p>This is not within the remit of the PPS.</p>
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## South Tyrone Empowerment Programme (STEP)

	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>Section 1: Introduction</u></b></p> <p>Should adequately highlight the fact that the primary concern must be the proper protection, support and treatment of victims of human trafficking.</p> <p>Would also be strengthened with statistics to provide context and illustrate scale of human trafficking</p> <p>It is essential that all police officers receive full training in the Home Office Guidance on Victims of Trafficking and UKBA Guidance “Identifying victims of Trafficking” Highlight the additional factors which may particularly affect the willingness of trafficked children and young people to discuss their experiences</p>	<p>The Policy has been amended in light of this comment.</p> <p>This comment is noted however it is not intended to provide statistics in the Policy.</p> <p>Training for police officers is a matter for the Chief Constable. The PPS will continue to feed into training for police when required. With regard to training for prosecutors. Cases involving human trafficking are dealt with by a centralised section with PPS by experienced Senior Public Prosecutors. Additional training on human trafficking has been provided to prosecutors who deal with such cases and further training is planned following the publication of the Policy.</p> <p>Section 1 of the Policy has been amended to include additional factors which may affect the willingness of victims of trafficking, including children and young people, to report or discuss their experiences.</p>

2	<p><b><u>Section 3: What is smuggling</u></b></p> <p>Section should specifically include reference to Article 3(a) of the Protocol against Smuggling of Migrants by Land, Sea and Air</p>	<p>Reference included as suggested.</p>
3	<p><b><u>Section 4: The role of the PPS</u></b></p> <p>It should be acknowledged that a closer working relationship between PPS and other agencies is vital if prosecutions are to be effective.</p>	<p>This comment is noted and the Policy has been amended to further highlight the importance of same.</p>
4	<p><b><u>Section 5: Prosecution decisions</u></b></p> <p>This section should highlight the evidential importance of identifying trafficked persons at an early stage. Only if the policies for identifying/protecting trafficked persons and the test for prosecution are rigorously enforced will it be possible to build successful prosecutions.</p> <p>Child victims of human trafficking require special protective measures. Legal professionals play an important role in ensuring that the rights of the child are safeguarded.</p>	<p>This comment is noted and will be addressed in training for Prosecutors.</p> <p>This comment is noted and in light of same relevant sections of the Policy have been amended to ensure that the specific needs of child victims are recognised including the need to consult with the Trust in any decisions affecting the welfare of child victims. The Policy has also been amended in light of these comments to include reference and a link to the “Working Arrangements for the Welfare and Safeguarding of Child Victims of Human trafficking” which details the support measures and inter-agency work that will take place to ensure that</p>

	<p>Designated senior police officers should be appointed as trafficking specialists.</p> <p>It must be clear that there does not need to be specific evidence of coercion for a child to be a trafficked person.</p>	<p>child victims of trafficking are supported and kept safe.</p> <p>The designation of senior police officers as trafficking specialists is a matter for PSNI and not within the remit of the PPS. Cases involving human trafficking are dealt with by a centralised section within PPS by experienced Senior Public Prosecutors. Additional training on human trafficking has been provided to prosecutors who deal with such cases and further training is planned following the publication of the Policy.</p> <p>This comment is noted. The Policy states that “A child cannot consent to their trafficking and cannot consent to their exploitation and therefore any child moved or recruited into or through a country for the purposes of exploitation is a victim of human trafficking”.</p>
5	<p><b><u>Section 7: Prosecuting suspects who might be trafficked victims</u></b></p> <p>The case of R v N; R v LE {2012} should be noted. It sets out clear principles and authorities for the application of the protective mechanism of the Trafficking Convention for future prosecutions where there is evidence of human trafficking.</p>	<p>The Policy has been amended to include reference to case as suggested. The Policy has also been amended to include reference to the Court of Appeal in the</p>

	<p>Highlight difficulties in the identification and prosecution of cases of trafficking for forced labour.</p>	<p>recent case of L, HVN, THN, T v R [2013] EWCA Crim 991. The Court of Appeal issued guidance about how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated.</p> <p>These comments are noted. Some of these difficulties are highlighted in the Policy and will be further addressed in training for Prosecutors.</p>
6	<p><b><u>Section 8: The views and interests of the victim</u></b></p> <p>It is imperative that the views and interests of the victim be given due consideration.</p> <p>The essential concern for all in the criminal justice process is that a person, who is a witness, victim or otherwise, gives the maximum possible cooperation in the criminal justice process. The less effective the protection of witnesses, the greater the prospects of cooperation being withdrawn.</p>	<p>These comments are noted. The Policy acknowledges the role that victims have in the criminal process and also highlights that the PPS recognises the central role of victims in achieving successful prosecutions and reinforces the PPS commitment to ensuring that the views and interests of victims are considered at every stage of the criminal process. The Policy explains the special measures and other legal protections are may be applied for to protect victims and to enable them to give their best evidence at court. The Policy has been</p>

		<p>amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance.</p> <p>VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of communication.</p>
<p>7</p>	<p><b><u>Section 14: Helping victims and witnesses to give evidence</u></b></p> <p>The prosecution should have specific duties to ensure the required level of protection is afforded to the victim (lists physical protection measures).</p> <p>It is imperative that a victim-centred approach is taken when prosecuting cases of human trafficking. Victims are put at the centre of these cases because of their extreme importance to the prosecution. In the majority of cases, victim co-operation is essential to the success of the prosecution. As such, it must also be remembered that these victims are often traumatised. During their first contacts with law enforcement, victims are likely experiencing serious physical and psychological harms and injuries resulting from their exploitation. It is thus understandable that their trust, confidence and co-operation must</p>	<p>The PPS will ensure that legal protective measures are applied for in all appropriate cases.</p> <p>The Policy has been amended in light of these comments to ensure that there is recognition amongst prosecutors that there are significant implications for victims who may be required to provide information on a number of occasions with the resultant risks of re-traumatising the victim. The PPS will continue to invest in training of</p>

	<p>be gained in order to obtain valuable evidence.</p>	<p>prosecutors and support staff on special measures, for example, the use of pre-recorded evidence in chief, and will continue to input into PSNI training to ensure that such needs are identified at the earliest possible stage. Prosecutors and support staff have also benefited from training from victim support agencies and psychotherapists to assist them to understand the effects of trauma on victims to enable them to respond appropriately. The PPS will continue to invest in this important training.</p>
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## The Trafficking Research Project

	Comment	PPS Response:
1	<p><b><u>General</u></b></p> <p>Responses and convictions for offences of human trafficking send a strong message to both perpetrators and victims...it is important that the current momentum is continued.</p> <p>A rights-based approach must be taken to ensure a strong response to human trafficking. The PPS is in a position to further develop the approach contained in the preamble to the Council of European Convention on Action against Trafficking in Human Beings and to place the protection and promotion of the rights of victims at the centre of NI's response to trafficking. However section 8 of the Policy fails to mention current state obligations to include victims in the criminal justice process. Advocate making greater reference to the relevant legal instruments and NI's human rights obligations throughout the Policy.</p>	<p>This comment is noted. The PPS considers human trafficking as extremely serious offences and will continue to prosecute identified perpetrators where there is sufficient evidence to do so.</p> <p>This comment is noted. A number of amendments have been made to the Policy in light of this and other comments. It is considered that the key tenets of the EU Directive on Victim's Rights are incorporated into the Policy. The Policy states that Victims will be treated with respect and also provides a commitment by PPS to ensure that Prosecutors are properly trained to ensure that they can effectively prosecute cases of Human Trafficking. The Policy has been amended in light of the establishment of a Witness Care Unit (VWCU). The VWCU will ensure that victims get information on their rights and their case in a way they understand and the VWCU will refer victims to existing support agencies such as Victim Support NI and NSPCC. The Policy</p>

	<p>Encouraged by several aspects including recognition of internal trafficking, the importance of engaging with victims and the challenges that victims face. Whilst the most effective means of addressing trafficking for the PPS may well be prosecution, a fully holistic approach is vital as is a coordinated multi-agency response.</p> <p>Concerned about potentially disproportionate emphasis in Northern Ireland on sex trafficking to the detriment of effectively addressing labour exploitation and domestic servitude. Acknowledge that the Policy discusses the different types of trafficking and it is important</p>	<p>contains information on the special measures available to vulnerable and intimidated victims to assist them to participate in proceedings and give their best evidence. The Policy acknowledges the role that victims have in the criminal process and also highlights that the PPS recognises the central role of victims in achieving successful prosecutions and reinforces the PPS commitment to ensuring that the views and interests of victims are considered at every stage of the criminal process. It is noted that the Directive has now been adopted and is therefore included in the list of International Instruments in Annex 3 of the Policy.</p> <p>The PPS welcomes this positive comment and notes the importance of a co-ordinated and multi agency response to human trafficking. The PPS will continue to work with its criminal justice partners as well as other statutory and voluntary agencies.</p> <p>This comment is noted. The PPS will ensure that training for prosecutors on human trafficking provides awareness of all types of human trafficking and the</p>
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	<p>that greater public awareness is drawn to all aspects of this issue. Reference included to the 2011 report, <i>Forced labour in Northern Ireland: exploiting vulnerability</i>, by Les Allamby, John Bell, Jennifer Hamilton, Ulf Hansson, Neil Jarman, Michael Potter, Sorina Toma</p> <p>Concerned that the perpetrators of human trafficking in Northern Ireland have been amorphously designated as ‘organised crime’, with little exploration of what this term actually means. Several reports in this regard have been published with absence of evidence. To effectively address human trafficking in NI, more information is needed on the perpetrators of this crime.</p> <p>It is important that the PPS disabuses human trafficking myths to not only ensure that prosecutions are successful, but to strengthen the ability of the criminal justice system’s response to it, eg by engaging with media after prosecutions and during training and outreach work</p>	<p>issues specific to each.</p> <p>The PPS will continue to work with the OCTF and are active participants of the Human Trafficking and Immigration Sub Group which has developed an Annual Human Trafficking Action Plan. The plan includes and identified actions to “improve the State’s response to the threat of human trafficking through better understanding of trends and drivers”.</p> <p>The PPS will continue to promote this Policy and will continue to provide training and engage in community outreach to raise awareness of human trafficking and the PPS role in relation to the prosecution of such cases.</p>
2	<p><b><u>Victims and Witnesses</u></b></p> <p>Welcome approach taken by PPS to the challenges and barriers faced by victims and witnesses. Feel approach could be further widened to consider the potential for adults to be internally trafficked within NI to include an acknowledgment that the challenges faced by this group may be different to those faced by non-nationals.</p> <p>Advocate making particular vulnerability of children more prominent and including more</p>	<p>This positive comment is noted. The Policy does advise that UK citizens can be trafficked within the UK. The Policy has been amended to expand on the issues faced by victims of differing backgrounds.</p> <p>The Policy has been amended in light of this</p>

	<p>concise information on steps PPS will take to protect children.</p> <p>Page 9 of Policy comments that “Exploited migrant workers do not always consider themselves to be ‘victims of crime’ due to the fact that their situation in NI is superior to that of their home country”. Consider that it would be beneficial to expand this idea to comment on differing interpretations between NI and other countries eg working hours, health and safety.</p> <p>The Policy could be improved by developing the issue of compensation for victims, and the provision of support and advice and how to pursue this.</p> <p>While the services, provided after sentencing, to victims may be beyond the remit of the PPS, the organisation should effectively sign-post these services and facilitate access to such services.</p> <p>It is important that PPS build good working relationships with NGO’s and other to ensure that service provision to victims is coordinated.</p>	<p>and other comments to expand on the issues that are relevant to children. The Policy has also been amended to include reference and a link to the “Working Arrangements for the Welfare and Safeguarding of Child Victims of Human trafficking” which details the support measures and inter-agency work that will take place.</p> <p>The Policy has been amended in light of this comment.</p> <p>The PPS can make an application to the court upon conviction of an offender for a compensation Order in respect of a victim of human trafficking and will do so in all appropriate circumstances The PPS can only provide advices regarding compensation as ancillary to criminal proceedings. The Policy has been amended to include information on the establishment of the Victim and Witness Care Unit (VWCU). The (VWCU) can provide victims with information on support services and will</p>
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	<p>Acknowledge the comments that blanket immunity may not be possible for victims who may have committed crimes. Encourage PPS to place a heavy emphasis on not pursuing prosecution against trafficked persons where the crime has been committed as part of the trafficking experience.</p>	<p>These concerns are noted and will continue to be addressed in training for prosecutors. The Policy has been amended to include reference to Article 26 of the Trafficking. The Court of Appeal case of R v N; R v LE [2012] EWCA Crim 189, illustrates that the UK's obligation under Article 26 of the Trafficking Convention was normally achieved by implementing the protection of victims of trafficking from prosecutions for crimes they may have been compelled to commit consequent to the trafficking. Therefore, the Prosecution had the discretion, however strong the evidence, to decide that it would be inappropriate to proceed or to continue with the prosecution of a defendant who was unable to</p>
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		<p>advance duress as a defence but who fell within the protective ambit of Article 26 of the Trafficking Convention.</p> <p>It is considered that the Policy is compliant with Article 26 (Non-punishment provision) of the European Convention and the European Directive and the relevant case law. The Policy explains that every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor militating against prosecution. This does provide the prosecutor with the discretion not to prosecute in cases where it is considered that the public interest does not require prosecution. The Policy includes reference to relevant case law including R v O [2008] EWCA Crim 2835 which highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be pro-</p>
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	<p>Emphasis need for PPS and PSNI to work together to build strong cases which can withstand the withdrawal of a victims participation.</p> <p>Concerns for the personal safety of victims and their families who may reside outside UK. Unfortunately PSNI are not able to guarantee safety and security of those outside the jurisdiction and this must be fully taken into account.</p> <p>The need for victims to understand the prosecution process is vital. It is important that interpreters have been appropriately recruited and that the privacy, safety and dignity of the</p>	<p>active in causing enquiries to be made. Sentencing following criminal conviction is a matter for the Judiciary. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about how the interest of those who are or may be victims of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p> <p>The PPS will continue to work closely with PSNI and other investigating agencies to assist in case building. In human trafficking cases Prosecutors will engage with police early in the investigation and will provide prosecutorial advice when required.</p> <p>The PSNI are responsible for advising the PPS on any risks to the victim or their family. The PPS will take such information into account when making any decision affecting the victim.</p> <p>The Policy has been amended as required and to include reference to PPS contract with NICEM</p>
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	<p>victim can be assured.</p> <p>There is no provision within the policy to inform victims of the progress of their case if they are no longer in NI.</p> <p>Commitment to providing detailed reasons for no prosecution decisions is important. Advocate that the minimum service provided to victims should be a face to face meeting.</p> <p>The opportunity to review a prosecutorial decision is positive.</p> <p>The commitment to the potential employment of special measures is positive. It is important that the use of an intermediary as a special measure to assist is considered and that the court is reminded of the potential of this role by the PPS.</p>	<p>Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters ' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p> <p>The Policy has been amended to include information on the establishment of the Victim and Witness Care Unit (VWCU) who can provide victims with information on the progress of their case even if they reside outside NI. The VWCU must be provided with contact details either from Police or directly from the victim.</p> <p>These positive comments are noted. Where a victim wishes to meet with PPS to discuss a no prosecution decision or to have the decision explained to them this will usually be accommodated.</p> <p>Legislation has commenced to enable a Registered Intermediary (RI) to be appointed to assist victims and/or witnesses in giving evidence. RI's are communication specialists</p>
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		<p>who facilitate communication between a victim or witness and the court. They can intervene to advise the court as to the age appropriate language which should be used when questioning or communicating with a child witness. They are also available during the police investigation stage to enable a victim or witness to provide their evidence to police, for example during their video recorded police interview and if required at consultations. The availability of RI's should ensure that child victims are able to fully participate in the criminal justice process and enable them to give their best evidence and that communication and questions are appropriate for the child's age and understanding. The PPS have been working with the Department of Justice to enable the commencement of the provision and to ensure that the required procedures are in place.</p>
<p>3</p>	<p><b><u>Broader issues for PPS to consider</u></b></p> <p>Greater commitment by PPS to address the perception of lack of transparency and accountability has been made by the organisation, through increased communication with witnesses and</p>	<p>This comment is noted. The PPS will continue to engage with other organisations and through Community Outreach to</p>

<p>engagement with media. It is important that this perception is applied to human trafficking cases.</p> <p>Welcome the prompt and in-depth response by PPS to FOI request relating to human trafficking cases. Hope PPS will continue with this transparent approach to its decision making and overall operation.</p> <p>The issue of delay within the criminal justice system in NI is well established. While recent inspection reports show that steps have been taken to mitigate this issue, more needs to be done. It is vital that the PPS is properly resourced to effectively address this crime.</p>	<p>increase understanding of the role of the PPS.</p> <p>The PPS welcomes this positive and encouraging comment.</p> <p>This comment is noted and the PPS will continue to work with others to address the issue of avoidable delay. Although PPS do have internal targets in relation to timeliness of decision the timeframes within which prosecutorial decisions will be taken will depend on the particular circumstances of each case. Prosecutors must ensure that they have all the necessary evidence and information to enable them to take a fully informed prosecutorial decision. If, following submission of a police file, further information is required to enable a prosecutorial decision to be made then the Prosecutor will issue a Decision Information Request (DIR). The PPS have been working on an initiative aimed at reducing the number of DIR's in indictable cases. This will involve Prosecutors engaging with police early in the case preparation stage to ensure that</p>
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	<p>It is important that prosecutors are aware that not all trafficking is of foreign women for the purposes of sexual exploitation. External barristers prosecuting on behalf of the PPS must also be conversant on the broader issue of human trafficking.</p> <p>There is nothing in the Policy to indicate that there is a complaint procedure available to victims and witnesses.</p>	<p>investigators have a clear understanding of the PPS evidential requirements in the event of a prosecution and thus reduce the time taken to take decisions and progress cases.</p> <p>The PPS will ensure that training for prosecutors on human trafficking provides awareness of all types of human trafficking and the issues specific to each. External barristers who prosecute on behalf of the PPS will benefit from the training.</p> <p>The PPS has a complaints policy which is available on the PPS website at <a href="http://www.ppsni.gov.uk">www.ppsni.gov.uk</a> or on request. An Independent Assessor of Complaints oversees the complaints handling process of the PPS.</p>
4	<p><b><u>Equality</u></b></p> <p>Broadly agree with the equality screening impact form.</p> <p>Encourage PPS to pay attention to several vulnerable groups of victims whose particular experiences of trafficking may be undervalued, misunderstood or ignored ie; those with learning disabilities, male victims, LGBT. With regard to those whose first language is not English PPS should be cautious in relation to the identification and use of interpreters, with attention paid to the gender of the interpreter in cases where sexual violence may have been a factor.</p>	<p>The Policy has been amended to illustrate particular issues faced by vulnerable groups.</p> <p>The Policy has been amended to include reference to PPS contract with NICEM Connect for the provision of interpreters who are 'National</p>

	<p>Note concerns about the potential impact that engaging with the criminal justice system may have on victims and/or their families and therefore advocate that the policy should engage more robustly with the Article 2, right to life implications.</p>	<p>Register of Public Sector Interpreters ' (NRPSI). This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience. Attention will be paid the gender of the interpreter in cases where sexual violence may have been a factor.</p> <p>Section 4 outlines the role of the PPS and reinforces that prosecutors must always be aware of, and act in accordance with, the ECHR. Public Prosecutors will consider in all cases the potential impact of their decisions on an individuals rights, particularly where there is a risk to the safety or life of an individual.</p>
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	<b>Comment</b>	<b>PPS Response:</b>
1	<p><b><u>General</u></b></p> <p>Welcomes the publication of the Policy and the opportunity to comment upon it on behalf Women’s Aid’s ten local groups</p>	<p>This comment is noted.</p>
2	<p><b><u>Victims and Witnesses</u></b></p> <p>Encouraged that the complexities inherent in being a victim of trafficking are addressed within the document, particularly by the document’s understanding of a victim’s potential fear and distrust of authorities and its myriad causes, as noted at pages 1 and 6.</p> <p>Note that Policy alludes to the diverse experience of those who are trafficked at page 14, and mentions ethnicity, age, immigration status, religion and culture as factors. However are concerned that the specific experience of women is not included in this list.</p> <p>Age disputes, page 16, opinion that all victims, until they have undergone a conclusive age assessment, should be treated as the age that they say they are and should be presumed to be telling the truth.</p> <p>Pages 15-16 requires amendment to more accurately reflect working arrangements between Migrant help and Women’s Aid.</p> <p>Concerned that the guidance states that “Charitable third sector support providers may also be able to provide accommodation” at page 16. Currently all support and accommodation is provided by Women’s Aid and Migrant Help, and an official Service Level Agreement is in place to that effect.</p>	<p>The PPS welcomes this positive comment.</p> <p>This comment has been noted and some amendments have been made to the Policy to make specific reference to women victims.</p> <p>This comment is noted. The Policy has been amended to clarify the law and procedure in this regard.</p> <p>The Policy has been amended as requested.</p> <p>The Policy has been amended to more accurately reflect current arrangements.</p>
3	<p><b><u>Prosecuting suspects who might be trafficked victims</u></b></p>	

	<p>Recommend that the guidance is strengthened to guarantee no prosecution, as opposed to merely considering this information as “a strong public interest factor mitigating against prosecution”</p>	<p>This recommendation cannot be accepted. The PPS cannot offer blanket immunity from prosecution as each case must be considered on its own circumstances. However the Policy has been amended to include reference to Article 26 of the Trafficking.</p> <p>The Court of Appeal case of R v N; R v LE [2012] EWCA Crim 189, illustrates that the UK’s obligation under Article 26 of the Trafficking Convention was normally achieved by implementing the protection of victims of trafficking from prosecutions for crimes they may have been compelled to commit consequent to the trafficking. Therefore, the Prosecution had the discretion, however strong the evidence, to decide that it would be inappropriate to proceed or to continue with the prosecution of a defendant who was unable to advance duress as a defence but who fell within the protective ambit of Article 26 of the Trafficking Convention.</p> <p>It is considered that the Policy is compliant with Article 26 (Non-punishment provision) of the European Convention and the European</p>
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		<p>Directive and the relevant case law. The Policy explains that every case must be considered on its own merits and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor militating against prosecution. This does provide the prosecutor with the discretion not to prosecute in cases where it is considered that the public interest does not require prosecution. The Policy includes reference to relevant case law including R v O [2008] EWCA Crim 2835 which highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be proactive in causing enquiries to be made. Sentencing following criminal conviction is a matter for the Judiciary. The Court of Appeal in the recent case of L, HVN, THN, T v R [2013] EWCA Crim 991, has issued guidance about how the interest of those who are or may be victims</p>
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		<p>of trafficking and who become involved in criminal activities should be approached if criminal proceedings have been initiated. The Policy has been amended to include reference to this recent case.</p>
<p>4</p>	<p><b><u>The views and interests of the victim</u></b></p> <p>Page 19 - With regard to the steps that should be taken when the victim withdraws support for the prosecution, in particular “the public prosecutor will also ask the police how they think the victim might react to being required to attend court to give evidence”, submit that a victim’s support worker may be best placed to assess the victim’s state of mind and party to the information most relevant to answering this question, given the nature of their role in the support of the victim. Recommend that the guidance is amended to include consulting with both police and support worker.</p> <p>Recommend that the PPS link in with support agencies as well as the PSNI in the event that it is necessary to call a victim against his or her wishes, as discussed at page 20.</p>	<p>The PSNI will be responsible for ascertaining and providing the requested information to the prosecutor. The PSNI may obtain such information from the victim or a support worker depending on the victim’s particular circumstances and views. The comment is noted though and will be addressed in training for prosecutors.</p> <p>In taking a decision about whether to call a victim against his or her wishes the PPS will consider all circumstances of the case including the particular views and circumstances of the victim. This will include considering any potential risk to the victim or their family of requiring the victim to give evidence and the potential risks of re-traumatising the victim. It may be necessary to obtain information from other agencies that are providing support to a victim. This comment is</p>

	<p>In relation to using a victim's statement as evidence without calling them to court (page 20), Women's Aid would urge that this special measure be standard practice where victims of human trafficking are concerned. Due to the nature of human trafficking, victims often find the evidence-giving process incredibly difficult.</p> <p>Recommend that the guidance specifically includes consideration of the risk factor to the safety of the victim and their family when deciding whether to proceed with a case without a victim's support.</p>	<p>noted and will be addressed in training from prosecutors</p> <p>The tendering of a victims statement of evidence is not a special measure. The circumstance's in which a witnesses' statement may be tendered in evidence in their absence is governed by specific legislation (requiring a formal application to the court. The granting of such application is a matter for the judge taking into consideration the legislation and its application to the particular case.</p> <p>The Policy has been amended as suggested.</p>
5	<p><b><u>Consultation</u></b></p> <p>Recommend that it may be helpful to allow a victim's support worker to be present at consultations.</p> <p>Strongly suggest at least one other female should be present in all consultations with female victims</p>	<p>A victim's support worker may attend at consultation with a victim where appropriate. The Policy has been amended to clarify this.</p> <p>This comment is noted. In all cases involving female victims another female can be present at consultation should the victim wish. This is addressed in guidance for prosecutors on consultations.</p>

	<p>Note that criteria regarding interpreters is discussed later in the guidance and would suggest that it would be useful to include these criteria at this stage of the policy document.</p>	<p>The Policy has been amended as suggested</p>
6	<p><b><u>Keeping the victim informed</u></b></p> <p>Recommend that support workers are also kept informed of the progress of cases.</p>	<p>The Policy has been amended in light of the establishment of the Victim and Witness Care Unit (VWCU). The VWCU will also conduct a 3 Tier Needs Assessment for each victim/witness at key stages of the process to ensure that the particular needs of victims and witnesses are met as far as possible and to identify as soon as possible whether a victim or witness may require the assistance.</p> <p>VWCU will ensure that victims are informed of the progress of the case in which they are involved using, where possible, the victims preferred means of communication</p>
7	<p><b><u>Bail</u></b></p> <p>Given the nature of human trafficking, and the elements of intimidation, coercion and control of victims involved, recommend that the presumption of granting bail is reviewed in cases of human trafficking, to properly reflect the nature of the crime and adequately protect victims.</p> <p>It may be prudent for prosecutors to request information from support agencies, who may hold relevant information, as well</p>	<p>The prosecution cannot simply object to bail being granted. There must be cogent reasons for such an objection which in the case of adults must be based on a well founded risk of one or more of the following:</p> <p>(i ) the accused will not appear for his trial;</p>

	<p>as police.</p>	<p>(ii) interference with the course of justice;          (iii) the commission of further offences;          (iv) that the release of the accused will lead to public disorder.</p> <p>The PPS will work with the PSNI to ensure that the Prosecutor has all the relevant information to ensure that bail is properly opposed when appropriate. The Policy also clarifies that where bail is granted by a District Judge (MC) the prosecutor will actively consider whether it is appropriate to appeal against the decision.</p> <p>The PSNI are responsible for ensuring that the prosecutor has all relevant information with regard to bail issues. This may include information from support agencies if relevant.</p>
<p>8</p>	<p><b><u>Helping victims and witnesses to give evidence</u></b></p> <p>Recommend that this policy includes a commitment by the PPS to proactively offer such measures in all human trafficking cases to victims, due to the intimidatory nature of the trafficker-victim relationship, and the potential for extreme distress on the part of the victim when facing their trafficker and intimidation of victims when giving evidence.</p>	<p>Legislation provides for the availability of special measures for vulnerable and intimidated witnesses. (Children are automatically deemed vulnerable due to their age). The legislation details who may apply for special measures and the circumstances in which special measures may be granted. The PPS is committed to ensuring that Prosecutors are trained in</p>

	<p>Welcome that the guidance states that “ PPS will not disclose addresses of victims or witnesses to the defendant and, unless already known or if required for evidential purposes, these will not be mentioned in court proceedings.” Wish to add that the location and address of all Women’s Aid refuges is confidential information, and should never be disclosed in a public setting.</p> <p>Urge that the policy specifies the need for accredited or professionally qualified interpreters, and a preference for interpreters that are accustomed to working in court and have experience working with victims of such crimes as these.</p> <p>Would like to add that Women’s Aid also offers a court support service for victims of human trafficking.</p>	<p>relation to the law and procedure relating to special measures to ensure that applications are made to the court for special measures in all cases that fall within the legislative provisions where the victim/witness wishes to avail of such assistance.</p> <p>This comment is noted. If the victim is residing at a Women’s Aid refuge the address of same will not be disclosed to the defendant or their legal representatives.</p> <p>The Policy has been amended to include reference to PPS contract with NICEM Connect for the provision of interpreters who are 'National Register of Public Sector Interpreters ' (NRPSI) included in Policy. This is a professional register of interpreters who have satisfied selection criteria in terms of specified qualifications and experience.</p> <p>The Policy has been amended to include reference to this service.</p>
9	<b><u>Sentencing</u></b>	

	The Policy does not currently outline how and in what circumstances a victim may be able to make a victim impact statement.	The PPS is currently working on a DOJ lead project to implement a Victim Personal Statement Scheme. The Policy will be amended to reflect the process when the scheme is launched.
10	<b><u>Services after sentencing</u></b>  Request that Women's Aid are included as an organisation providing care / support after sentencing.	Women's Aid have been included as requested.
11	<b><u>Annex 5; contact details of support agencies</u></b>  Requires amendment to Women's Aid contact details.  Suggest that Migrant Help "provide accommodation and support to <b>male</b> victims of human trafficking."  Advise that Contact Youth has now been renamed Contact NI.	The Policy has been amended in light of this advice.  This comment is noted although it is not proposed to amend the Policy as Migrant Help can also provide support to female victims (although it is recognised that in NI that women's Aid are the delivery partner for Migrants in respect of female victims)  The Policy has been amended in light of this advice.

*Please note that some of the numbered paragraphs or pages referred to may have a different numbering in the final draft of the policy. The paragraph and page references above relate to the version of the policy that went to consultation.*

The PPS would like to thank all organisations for their comments which have been invaluable in assisting with the development of this Policy.

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